



The Board of

Railway Commissioners for Canada

INDEX TO VOL. No. VIII

OF

JUDGMENTS, ORDERS, REGULATIONS AND RULINGS OF THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA

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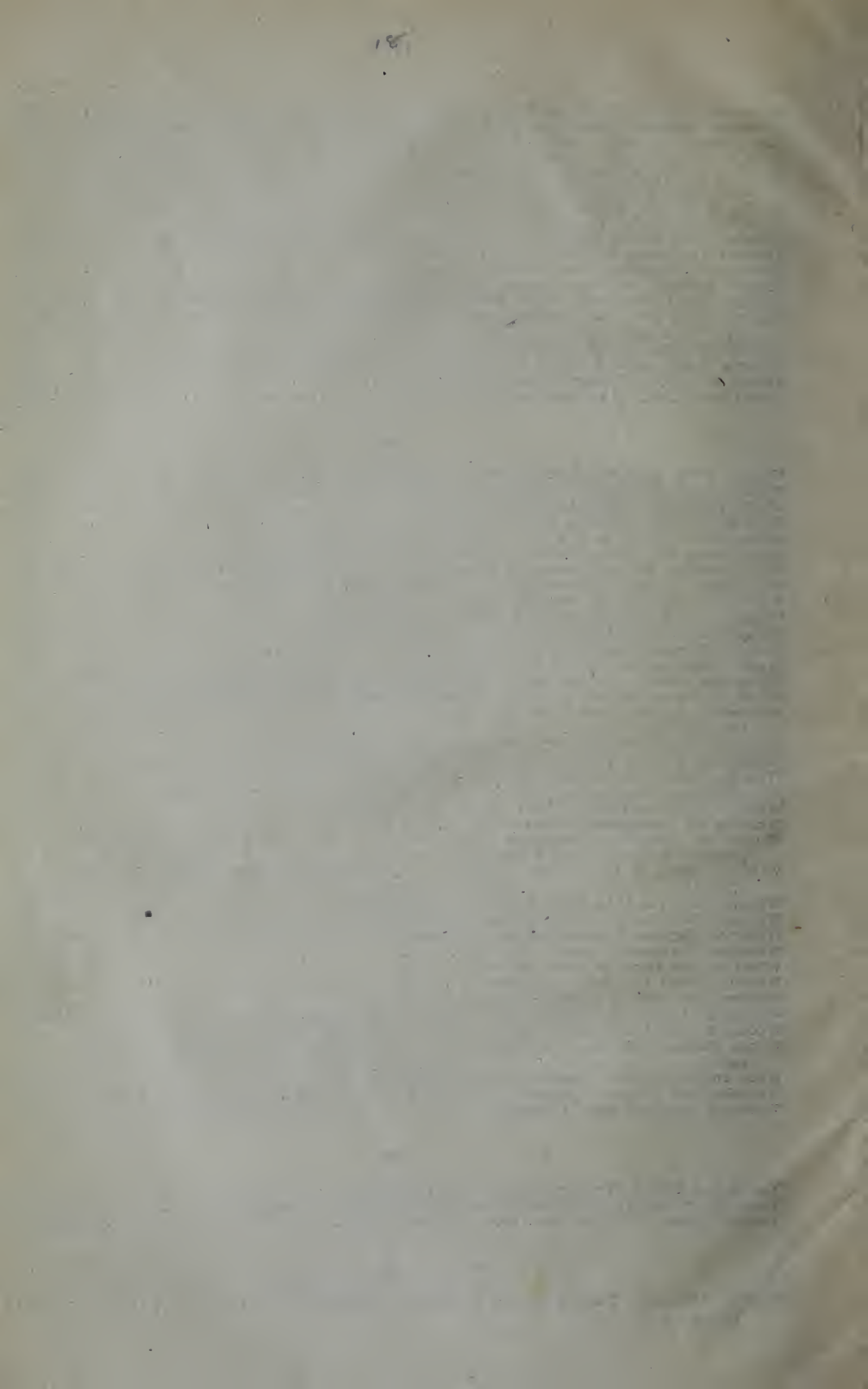
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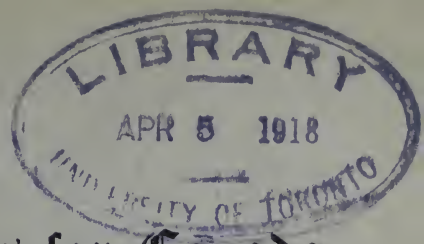
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The Board of

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Judgments, Orders, Regulations, and Rulings

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No. 1

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Complaint of the Lyons Fuel and Supply Company, Limited, of Steelton, Ont., with reference to freight rates on charcoal wood shipped over the Algoma Central and Hudson Bay Railway.

File 25181.

JUDGMENT.

THE CHIEF COMMISSIONER:

I agree with the result that Mr. Commissioner Goodeve arrives at. The rate afforded the Standard Chemical Iron and Lumber Company of Canada by the Algoma Central and Hudson Bay Railway Company is unreasonably low. It is so low and so much out of proportion with the general scale, that in effect it constitutes an unreasonable discrimination in favour of the Chemical Company as against other shippers on the company's line.

For the reasons that I have set out at length in the judgment delivered in the application of the Canadian railway companies for a recommendation to the Governor in Council, under "The War Measures Act, 1914," for a general advance in freight and passenger rates (file No. 27840), pp. 427 and 428, and 432 *et seq.*, I would give no effect whatever to the agreement pleaded by the Standard Chemical Company.

An order should go directing the company to remove the discrimination alleged by filing tariffs which will provide for a fair and reasonable rate. The rate which is allowed under Mr. Commissioner Goodeve's judgment would appear to be just and reasonable.

OTTAWA, March 2, 1918.

Mr. COMMISSIONER GOODEVE:

This is a complaint that the rate charged by the Algoma Central and Hudson Bay Railway Company for the carriage of cordwood for local domestic consumption is excessive, or, if not so judged, is discriminatory as compared with the rate the same company charges the Standard Chemical, Iron and Lumber Company of Canada.

Mr. Wood, who appeared on behalf of the Algoma Central and Hudson Bay Railway Company, said at p. 5630, vol. 276, of the evidence:—

"The facts are not in any way in dispute. The position of the Algoma Central Railway is that the rate established against which the protest is made

by Lyons, is on a basis similar to, and certainly not higher than the rate which is approved by the Board, and which is in operation so far as the other companies are concerned.

"So far as the claim that this rate discriminates against Lyons is concerned, the facts are again not in dispute.

"I don't know that from the railway company's standpoint we can hope to argue successfully that the rate to the chemical company does not discriminate."

The reason given by the Algoma Central for the rate in effect with the chemical company is that it was due to a contract growing out of conditions relative to a sale by a company, of which the railway company was at that time a subsidiary company, of a chemical plant to the Standard Chemical Company. This is not disputed, but on the contrary, Mr. McPhail on behalf of the chemical company pleads these contracts as a justification for the rates, and a reason for their continuance.

Clause 6 of the agreement made between the Algoma Steel Corporation, Limited, and the Standard Chemical Company, of Toronto, Limited, dated November 6, 1909, is as follows:—

"6. The steel company will procure the said railway company to enter into a contract with the chemical company for the delivery to the chemical company of sufficient cars for wood hauling in connection with the said charcoal plant. The freight rate to be at the rate of 50 cents per cord for a haul of 50 miles or less. Hauls in excess of 50 miles to be at the rate of 1 cent per cord per mile for such excess.

"The above rates shall include the proper placing of cars at the said charcoal plant and the free use of available sidings and piling ground along the right-of-way of the railway company.

"The above contract for wood hauling shall be for a period of ten years from the first day of July, 1911, to be renewed for further successive periods of five years upon terms to be mutually agreed upon at the end of each period."

In accordance with this clause of the agreement a further agreement was made on the same date between the Algoma Central and Hudson Bay Railway Company, of the first part, and the Standard Chemical Company of Toronto, Limited, of the Second part, the preamble of which is as follows:—

"Whereas by a certain agreement dated the sixth day of November, 1909, and made between the Algoma Steel Company, Limited, of the first part, and the chemical company of the second part, the said the Algoma Steel Company, Limited, agreed to procure the railway company to enter into an agreement granting to the chemical company the right to cut cordwood upon terms more particularly mentioned and set out in said agreement, and

"Whereas by said agreement the steel company further agreed to procure the railway company to enter into a contract with the chemical company for the delivery to the chemical company of sufficient cars for wood-hauling in connection with charcoal plant of the chemical company upon terms more particularly mentioned and set out in said agreement."

Clause 3.

"The railway company will from time to time deliver to the chemical company, its successors or assigns on its lines of railway, sufficient cars for the hauling of wood used in connection with the said charcoal plant, and the rate of freight therefor is hereby fixed at 50 cents per cord of wood hauled for a haul of fifty miles or less. Hauls in excess of fifty miles to be at the rate of 1 cent per cord per mile for such excess.

"The above rate shall include the proper placing of cars at the said charcoal plant of the chemical company, and free use of available sidings and piling grounds along the right-of-way of the railway company. The contract for wood-hauling shall be for a period of ten years from the first day of July, 1911, to be renewed for further successive periods of five years upon the terms to be mutually agreed upon at the end of each period."

It is quite evident, therefore, that the basis upon which the rate was made was not the cost of service to the railway company, or whether it was in itself fair and reasonable, but rather the advantage to the parent company in connection with its whole undertaking.

Page 5644:—

"The CHIEF COMMISSIONER: But you go farther than that, and say that your contract is really with the parent company?"

"Mr. McPHAIL: Yes, sir.

"The CHIEF COMMISSIONER: And that the parent company; while the railway company gets no concessions whatever—it is penalized by a lower rate than it otherwise would get—that the railway is merely the creature of the parent company—and that the parent company gets value for the concession.

"Mr. McPHAIL: Yes."

Page 5648:—

"The CHIEF COMMISSIONER: What are your cost figures per ton per mile on your railway?"

"Mr. WOOD: As a matter of fact Mr. Chairman, dealing with that rate, it is a rate at which we lose money. At a rate of 50 cents we lose money, I don't care whether it is discriminatory or not, under the circumstances. That is the effect, anyway. This thing was wished on us by others than ourselves, and is not a contract in the best interests of the railway or the public at large."

Under these circumstances, I do not think this agreement should be allowed to prevent a consideration of the rate upon its merits.

As shown in the report of Chief Traffic Officer, cordwood for domestic use is carried by the Algoma Central at the special mileage scale of rates authorized by the Board in the Eastern Rates Case, pp. 212-213, herein called the "open" scale. The Algoma Central's scale is the same as that of the Grand Trunk and Canadian Pacific and of eastern carriers generally. The Algoma Central's tariff reference is C.R.C. 388.

The chemical company has been given a reduced rate of 50 cents per cord, which, instead of graduating according to distance as in the open scale, is blanketed for all distances up to 50 miles. Mr. McPhail, who appeared for the chemical company, said (p. 5637) his clients' operations extended from 24 to 44 miles, and (p. 5644) gave the average haul as about 35 miles. The tariff (C.R.C. 417) sets out that this rate applies only when the products of the wood are reshipped over the Algoma Central's rails. The Grand Trunk Railway and Canadian Pacific Railway also have reduced rates for the same purpose to other plants of the Standard Chemical Company located on their lines, although theirs are higher than the rate in issue.

During the Eastern Rates Case inquiry, Mr. Dewey related the history of the Grand Trunk's rates and the efforts made to increase them to a paying basis. He claimed they were initiated on an abnormally low basis with the object of fostering the industry, and he referred to the higher Canadian Pacific Railway rates to plants installed later as evidence of the industry's ability to give his company more remunerative earnings. His evidence is recorded in vol. 226, p. 2315. The Grand Trunk has now, effective January 1 of this year, increased its rates and loads, but I confine my tabulation to those in force at the time of the hearing, converting the

other companies' per-carload rates into rates per cord for better comparison with the Algoma Central's rates.

According to the Railway Equipment Register the Algoma Central has 471 flat cars of 40-foot length and 80,000 pounds capacity, 51 box cars of 36-foot length and 80,000 pounds capacity, and 8 box cars 33 feet $4\frac{1}{2}$ inches long and 50,000 pounds capacity.

Taking the standard car, the minimum load under the open scale of the three companies is 35,000 pounds, equivalent to $9\frac{1}{2}$ cords on the basis of 3,750 pounds to the cord. The reshipping loads differ, the Algoma Central's being 12 cords and the Canadian Pacific's 16 cords. The Grand Trunk's was 10; it is now $16\frac{1}{2}$ cords.

For the districts covered by the chemical company's operations on the Algoma Central, the Grand Trunk Railway and Canadian Pacific Railway rates are assigned to three mileage blocks, namely, 21-30, 31-40, and 41-50 miles, respectively. A statement of the three companies' per cord rates follows:—

RESHIPPING RATES.

Miles.	Open Scale.	G.T.R.	C.P.R.	A. Central.
21-30	131 cents.	84.5 cents.	79.4 cents.	50 cents.
31-40	141 "	92.0 "	84.4 "	50 "
41-50	150 "	97.0 "	89.4 "	50 "

That the contract between the railway company and the chemical company, so far as the rates is concerned, was favourable to the latter is evident.

Their plea that the greater volume of traffic they give the railway entitle them to a preferential rate is not sound in my opinion. Were it otherwise, the large shipper would be advantaged to the detriment, not to say the extinction, of the smaller one in every line of trade.

They allege that their factory is so located back from the docks that they are confined to the railway for their raw material, whereas complainants have the advantage of the river sources of supply and use them. The Board and the Interstate Commerce Commission have both held that rates cannot lawfully be adjusted to equalize commercial or location advantages.

The further contention was advanced that the chemical company is not in competition with any fuel concern; but it must be apparent that no dealer can expect to be able to buy wood, on which he would have to pay from \$1.31 to \$1.50 per cord freight, against the chemical company, with their 50 cent rate.

On the other hand, while the Railway Act does not require, nor has the Board required, lower rates to be charged on raw materials, which return added revenue to the carrier from the haulage of the finished products, than on the same materials carried in the ordinary course of commerce, railway custom has given the status of validity to certain such concessions. Grain for milling and malting, and spruce and poplar logs for turning into pulp and paper, may be mentioned. The Board may, however, prevent discrimination in connection with such established arrangements.

In my view, the chemical company's rate is unduly low. At their South River, Longford and other plants the second haul of the products is the important consideration; but at the "Soo" the Algoma Central gets merely a switching charge on the factory shipments over the Canadian Pacific Railway to Montreal and other points in eastern Canada.

The Algoma Central did make an attempt at higher rates by its tariff C.R.C. 398 on the 20th March last, but withdrew it on the 1st June. This tariff, for the three mileage blocks shown in the table above, made the rates 80, 85 and 90 cents per cord, respectively. By letter dated June 16 last, the company's general freight agent asks authority of the Board to cancel the 50 cent rate and to charge the open scale on all wood, subject to the following exceptions in cents per 100 pounds.

To 5 miles, 2 cents; now to 5 miles, $2\frac{1}{2}$ cents.

Six to $10\frac{1}{2}$ miles, 2 cents; now 6 to 10 miles, $2\frac{1}{2}$ cents.

Over $10\frac{1}{2}$ to 20 miles, $2\frac{1}{2}$ cents; now over 10 to 20 miles, $3\frac{1}{2}$ cents.

These reductions below the rates authorized by the Board in the Eastern Rates case are evidently intended to satisfy complainants.

It should be mentioned that the present chemical wood tariff carries the following notation:—

“Reduced rates authorized by this tariff are temporary and will be increased to general advanced basis later, as published by other lines in Canada.”

I think the rates published for the 20th March last, and withdrawn on the 1st June, should be authorized by the Board, and Order issued accordingly. They are the same as those of the Canadian Pacific for the same distances, and lower than the Grand Trunk's to the same company's plants elsewhere. Should the companies get the 15 per cent increase recently authorized by the Board, but postponed to March 15 by the Governor-in-Council, the chemical companies rates would then be those shown in the following second rate column, the first column giving the rates of the temporary tariff above mentioned:—

	1.	2.
21-30 miles.	80 cents.	\$0 92 cents per cord.
31-40 “	85 “	0 98 “ “
41-50 “	90 “	1 03½ “ “

OTTAWA, February 26, 1918.

Mr. Commissioner Boyce concurred.

ORDER No. 27058.

In the matter of the complaint of the Lyons Fuel and Supply Company, Limited, of Steelton, Ont., against the rates charged by the Algoma Central and Hudson Bay Railway Company on cordwood.

File No. 25181.

WEDNESDAY, the 6th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, October 23, 1917, the Algoma Central and Hudson Bay Railway Company and the Standard Chemical Iron and Lumber Company of Canada, Limited, being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered, as follows:

1. That the Algoma Central and Hudson Bay Railway Company forthwith amend its special local commodity tariff, C.R.C. No. 388, in so far as it applies on cordwood, in earloads, to provide the following rates, namely:—

For distances not over 11 miles, 2 cents per 100 pounds.

For distances over 11 miles and not over 20 miles, 2½ cents per 100 pounds.

2. That the said company be permitted, on lawful notice, to cancel its special local freight tariff on charcoal wood, C.R.C. No. 417, applicable only when the product of the said wood is shipped over the railway of the said company, and in place thereof

and subject to the same application, to publish and file a special tariff to provide the following rates, namely:—

Over 20 miles and not over 30 miles,	80 cents per cord.
“ 30 “ “ 40 “ 85 “ “	
“ 40 “ “ 50 “ 90 “ “	

And whereas the Canadian Pacific and Grand Trunk Railway Companies, under the judgment of the Board, dated December 26, 1917, increased their special charcoal wood rates by 15 per cent.

And whereas, by Order in Council No. P.C. No. 229, the time when the said increases were to become operative was extended until the 15th day of March, 1918,—

It is therefore further ordered: That, subject to the provisions of the said Order in Council No. P.C. 229, and such other Order or Orders in Council as may issue in the premises, the Algoma Central and Hudson Bay Railway Company be, and it is hereby, permitted, on lawful notice, to increase its rates on charcoal wood as follows, namely:—

Over 20 miles and not over 30 miles, to 92 cents per cord.

Over 30 miles and not over 40 miles, to 98 cents per cord.

Over 40 miles and not over 50 miles, to 103½ cents per cord.

H. L. DRAYTON,
Chief Commissioner.

Classification of cut glass ware. Application of the Wallaceburg Cut Glass Works.

File 15628.1

Heard at Windsor, Ont., November 22, 1917.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

The applicant desires to get a carload rating on cut glass from its factory at Wallaceburg, Ont., to a number of distributing points, and also a reduction in the L.C.L. rating on cut glass.

The glass manufactured by the applicant consists chiefly of tumblers and glass jars. They are manufactured from an inexpensive quality of glass, and the cutting on the glass is of a simple and inexpensive nature. The jars are valued by the manufacturer at a price not exceeding \$5 per dozen, and the tumblers are valued at a price not exceeding \$1 per dozen.

At the time of the hearing there was no carload rating on cut glass in Canada at all, and the L.C.L. rating is double-first. In the United States the official classification of cut glass, L.C.L., is rated at 1½ first-class.

The applicant claims that the product of the factory enters into competition with stencilled glass from the United States, which is rated second-class, L.C.L.

At the hearing, Mr. Chisholm, K.C., who appeared for the Canadian Freight Association, stated:—

“I was instructed to say that if you could satisfy the railways and the Board that there were certain points in the West to which you could ship carloads of this class of goods, and would name these places, they would give you a third-class commodity rate to these places on carload quantities.”

Since the hearing the Canadian Freight Association has voluntarily put in a special all-rail freight tariff, being C.R.C. No. 5, issued December 31, 1917, effective January 8, 1918, giving a carload commodity rate on cut glass jars, value not exceeding \$5 per dozen, and so receipted for; and, on cut glass tumblers, value not exceeding \$1 per dozen, and so receipted for, packed in barrels or boxes, and at owner's risk

or breakage, in straight or mixed carloads, minimum weight 20,000 pounds, from Wallaceburg, Ont., to Winnipeg, Man., of \$1.25 per 100 pounds. This is equivalent to third-class rating.

It seems to me that the railway companies, having voluntarily put in this C.L. rate to Winnipeg, it is now but reasonable that carload commodity rates should also be given from Wallaceburg to similar distributing centres in the east. From the evidence, Toronto and Montreal are the only points to which such rates might be given at present.

In dealing with the question of C.L. rating, the Interstate Commerce Commission (25 I.C.C. 46405) lays down the following principle:—

“A C.L. rating should be established for a commodity when that commodity can be offered for shipment in C.L. quantities, unless public interests or other valid considerations require the contrary. . . . Assuming a proper relation between C.L. and L.C.L. rates, the establishment of C.L. ratings whenever C.L. quantities are offered will, we believe, meet the needs of new and growing lines of industry without discrimination.”

Also in 22, I.C.C., 327, we find it stated:—

“The C.L. shipper is entitled to a better rate than he who can only present for shipment an L.C.L., since the cost of the service is less, but that difference must not be greater than circumstances warrant.”

The present case is distinguishable from the *Ledoux Co. v. Canadian Freight Association*, 12 *Canadian Railway Cases*, p. 3, where the Board refused a carload rating on cigars, on the ground that it was not the custom for cigars to move in carload lots, and that although there were many manufacturers of cigars in the east shipping to the west, the Ledoux Company was the only manufacturer seeking a carload rating. It was assumed by the Board that the shipments of cigars that would move in carloads would be a small percentage of the traffic.

In the present case the applicants appear to be the only manufacturers of cut glass of this kind in Canada, and much of their output to points where they would be given carload rates would be shipped that way. In my opinion the applicant should be given commodity rates on the 3rd class basis to Montreal and Toronto, subject to the same conditions as set out in the Canadian Freight Association Tariff C.R.C., No. 5, already referred to.

With regard to the portion of the application asking for a reduction in L.C.L. rates from double-first to first or second-class, I am of the opinion that a good deal of difficulty would arise if the Board attempted to differentiate between cut glass moving L.C.L., which is of a high value, and the cut glass of the applicant company. It is not intended that the deep-cut luxurious article, handled by jewellers, should be given any reduction in its present double-first-class rating.

The Board in 1911, File 15628, decided that there should be no reduction in rating on cut glass, L.C.L. There is nothing before us which would warrant any review or change in that decision. It seems to me it would be a mistake for us to have two L.C.L. rates on cut glass, which would be governed only by the value of the article. This would lead to confusion and perhaps deception. It would be quite impossible for a railway company to open L.C.L. shipments of cut glass to have the commodity valued to determine its rating.

In 25 I.C.C., 474, the Interstate Commerce Commission said:—

“No classification can be so minute as to conform to the different varieties and conditions of traffic. To separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification.”

I think we should decide that cut glass is cut glass and two ratings on that commodity, L.C.L., would not be practicable.

It seems to me that if the applicants take advantage of the carload rates to Toronto and Montreal, which I think should be established, and make these points distributing centres, the applicant will be in good shape to meet the competition complained of.

An order should go as I have suggested.

OTTAWA, March 9, 1918.

Commissioner Boyce concurred.

COMMISSIONER McLEAN: On the particular facts, and also with a view to heavier loading, I am of opinion that carload ratings should be provided for in the case of the movements to Toronto and to Montreal.

ORDER No. 27068.

In the matter of the application of the Wallaceburg Cut Glass Works for a lower rating than provided in the Canadian Freight Classification No. 16 for cut glassware.

File No. 15628.1.

SATURDAY, the 16th day of March, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Windsor, November 22, 1917, the applicant and the railway companies being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered:

1. That the Pere Marquette Railway Company publish and file a joint commodity tariff applying the published and filed third-class rates from Wallaceburg, Ont., to Toronto and Montreal on cut glass jars, value not exceeding \$5 per dozen, and so receipted for; and on cut glass tumblers, value not exceeding \$1 per dozen, and so receipted for, packed in barrels or boxes, and at owner's risk of breakage, in straight or mixed carloads, minimum weight 20,000 pounds per car.

2. That the said tariff become effective not later than the 8th day of April, 1918.

3. That the application for a reduction in the less than carload rating of the Canadian Freight Classification of cut glassware be, and it is hereby, refused.

D'ARCY SCOTT,
Assistant Chief Commissioner,

Application of Mr. Hannah, Toronto, Ont., for cancellation of the following clause on the Order Bill of Lading approved by the Board:—

“Inspection of goods covered by this bill of lading will not be permitted unless provided by law or unless permission is endorsed on this original bill of lading or given in writing by the shipper.”

File 25407.3.

Heard at Toronto, Ont., February 15, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:—

The present bill of lading was approved by the Board after it had been gone over, very carefully, clause by clause, by representatives of shippers, financial institutions, and the railway companies.

At the hearing Mr. A. C. McMaster, K.C., who appeared for the Canadian Manufacturers Association and the Toronto Board of Trade and who had had a part in the settlement of the form of the bill of lading, said:—

“But what I want to say in general in respect of the three applications, including Mr. Hannah’s, notwithstanding the fact that the Board of Trade are making application to amend the bill of lading, is that it seems to me that this Commission ought not to touch that uniform bill of lading unless they are prepared to go into the whole thing from beginning to end. I remember when we were settling that uniform bill of lading it took us upwards of a year, and it was a matter that practically was not settled by Order of the Board, but by agreement. All the railways were represented both by their counsel and by their traffic men, the Toronto Board of Trade, the Manufacturers Association, the Montreal Board of Trade and other mercantile bodies were represented. We went over this uniform bill of lading clause by clause and compared it with the American bill of lading. I do not suppose any of us obtained everything we wanted, but we compromised this clause, adjusted that, gave away on this point or compromised on another, and gave up things we thought we ought to have in order to get other concessions. - - - - -

“Now the question is: Are we to revert to the old situation? This has been standing for ten years and no application has been made in respect to it that I know of, certainly none has been granted, and I wish to point out that if the Board are going to start to make this little change now and that little change later we will be inundated with such applications, we will get away from the compromise agreement and we will all seek to have the whole thing opened up. That is the position.”

Of course the position taken by Mr. McMaster would be no justification for this Board refusing to entertain Mr. Hannah’s application if we were satisfied that the merits in his case showed clearly that it was in the interests of the public that a change should be made in the bill of lading. The point at issue is really a very small one. As the bill of lading is worded at present, the general practice is to refuse the consignee the right to inspect before paying his freight and surrendering his bill of lading unless the consignor has endorsed permission to inspect on the bill of lading. Mr. Hannah wants the arrangement reversed and wishes to give the consignee the right to inspect unless the consignor specially endorses the bill that inspection is not to be allowed until payment of freight and the surrender of the bill of lading. It is really not a matter with which the railways are much concerned. It is more a question of convenient business arrangement between the shipper and the consignee.

It seems to me the present arrangement should not be disturbed. It has been the practice in commercial transactions, for many years, business houses, banks, and other financial institutions have recognized and are familiar with the practice.

If Mr. Hannah, or any other consignee wants the privilege of inspection before surrender of bill of lading or paying freight, it would be a simple matter for them to arrange with the shipper that such permission was to be endorsed upon the bill.

As the matter appears to me now, on what was submitted to us at the Toronto hearing, the present method of regulating inspection should be continued. I would not change the bill of lading, but would dismiss Mr. Hannah's application.

OTTAWA, March 13, 1918.

Commissioners McLean and Goodeve concurred.

ORDER No. 27079.

In the matter of the application of R. W. Hannah, of Toronto, Ont., for a cancellation of the following clause on the order bill of lading approved by the Board:
"Inspection of goods covered by this bill of lading will not be permitted unless provided by law or unless permission is endorsed on this original bill of lading or given in writing by the shipper."

File No. 25407.3.

TUESDAY, the 19th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, February 15, 1918, the applicant, the Canadian Manufacturers' Association, the Canadian Freight Association, the Boards of Trade of Toronto and Montreal, and the Grand Trunk, Canadian Pacific, and Canadian Northern Railway Companies, and the Michigan Central Railroad Company being represented at the hearing and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

H. L. DRAYTON,
Chief Commissioner.

Application under Section 364, for an Order exempting both the Grand Trunk Railway Company and the Quebec, Montreal & Southern Railway Company from complying with the conditions required by Section 364, in the matter of the agreement between these two Companies re Joint Section, Napierville to Noyan Junction.

File 28494.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

The application is for exemption from compliance with the provisions of the statute as to obtaining the sanction of the Governor in Council as well as exemption from compliance with the conditions mentioned in subsection 2 of section 364.

Mr. W. C. Chisholm, K.C., on behalf of the Grand Trunk Railway Company argues that the sanction of the Governor in Council is one of the "foregoing conditions" from which the Board may exempt the company from compliance under subsection 3. He further suggests, that subsection 2 of section 364 seems rather to indicate an expectation that, in a case such as this, the sanction of the Governor in Council will be dispensed with by the Board, because it provides that "the duplicate original of such agreement, etc.," shall be filed with the Board, in contrast with the provisions of subsection 5 of section 361, which requires a duplicate original of such agreement to be filed in the office of the Secretary of State for Canada.

The point raised by Mr. Chisholm, being submitted to the solicitor of the Board, I quote from his opinion as follows:—

"It would be an absolutely new departure for the Board to exempt railway companies from obtaining the sanction of the Governor in Council to agreements contemplated by section 364, as suggested by Mr. Chisholm; and I think, before the Board attempts to exercise such power, the right to do so should appear in the clearest possible language."

"As set out by MacMurchy & Dennison in their notes to section 364, Railway Law of Canada (2nd Ed.) at p. 606, the powers of the Board with reference to working agreements and agreements for amalgamation are advisory only, the Governor in Council being the body clothed with final authority to sanction or otherwise deal with the agreement."

"The very provision Mr. Chisholm refers to as indicating an expectation that in a case such as this the sanction of the Governor in Council would be dispensed with, is to me an indication that such was not the intention.

"The clause reads: " . . . and that the duplicate original of such agreement or arrangement shall, *upon being sanctioned*, be filed with the Board."

"I do not, therefore, agree with Mr. Chisholm's view that the sanction of the Governor in Council is one of the 'foregoing conditions' which the Board may exempt the company from complying with under subsection 3.

I concur in Mr. Blair's view.

Traffic agreements are, by section 364 (d) "Subject to the like consent of the shareholders, the sanction of the Governor in Council upon the recommendation of the Board, application, notices and filing, as hereinbefore (sec. 361) provided with respect to amalgamation agreements."

Reference to the requirements of section 361 shows that:—

(2) It *shall* be submitted to the Board with an application, etc.,—and

(3) Notice *shall* be given in the *Canada Gazette*, and *may* (unless dispensed with by the Board) be required to be given in a local paper,—and

(4) Notice being given, the Board *shall* grant or refuse—and, if it grants, "*shall* make a recommendation to the Governor in Council for the sanction of such agreements."

The wording of subsection 3, section 364, is a little confusing at first sight, but the last two lines of it seem to evidence the intent to limit the right of the Board as to waiver of conditions to dispensing with the necessity of obtaining consent of shareholders, "where such consent . . . is deemed by the Board to be unnecessary."

By the proviso in (d) to subsection 2 of section 364, as Mr. Blair points out, the agreement is not complete until a duplicate original, etc., "*upon being sanctioned*," be filed with the Board.

Can the Board order that the sanction of the Governor in Council be dispensed with as regards an agreement falling within (d) of subsection 2 of section 364?

I think there is no power in the Board to say that the sanction of the Governor in Council, obligatory under section 361, equally obligatory under section 364, should be dispensed with as a "condition" which it may dispense with.

When it is considered that every Act of the Board may, by section 56, be reviewed, and reversed, by the Governor in Council, it is difficult to see that the sanction of the Governor in Council to these traffic agreements is merely a condition or formality that the Board may dispense with, and, indeed, I do not think that the intent of the section referred to by Mr. Chisholm goes that far.

I agree, that as regards working and amalgamation agreements, as well as in some other matters dealt with by the enabling Act, the functions of the Board are advisory only. It would be improper, in my judgment, and irrespective of my view of the sections referred to, for the Board to say that, in any case, when sanction is required, that sanction might be dispensed with.

I think, also, that it is reasonably clear, from the latter part of (d) of subsection 2 of section 364, and of subsection 3 of the same section, that the "conditions" the Board has power to dispense with are conditions as to consent of shareholders, advertising in local papers, and other conditions as to procedure *in bringing the agreement properly before the Board*. As regards *subsequent* procedure to validate, I think reason, and the provisions of statute, combine to show that the Board has no power to interfere, and it can only recommend for sanction by the Governor in Council, an agreement properly brought before it, of which it approves.

OTTAWA, March 14, 1918.

The Assistant Chief Commissioner and Commissioner McLean concurred.

Express Rates on Fish.

File 4214.517.

JUDGMENT.

THE CHIEF COMMISSIONER:

The Dominion Express Company have in the past made deliveries of fish by cartage to consignees. By Supplement 11 to Tariff C.R.C. No. 4418 and Supplement 8 to Tariff C.R.C. No. 4437, effective January 15, 1916, the company sought to cancel all cartage delivery applying to fish moving in carload lots from the Atlantic and the Pacific.

The Board, by order of suspension numbered 24628, suspended these supplements, with the result that the company has been forced to continue delivery of fish as in the past.

The company seeks to sustain its action in cancelling delivery, in view of the following facts:—

1. That the rates from the Pacific to eastern cities are extremely low, and were rates forced by competition.
2. That these rates, competitive as they are, compared with rates in American territory which do not include the cartage delivery service for fish moving in carload lots.
3. That it was never intended by the express companies to make cartage deliveries of fish handled in carload lots.

Dealing with the last point first, in the matter of the complaint of the W. J. Guest Company, Limited, of Winnipeg, Man., against the fish rate to Winnipeg as being discriminatory as compared to Pacific rates to eastern points, Mr. Burr, who acted in that case for the express companies, in dealing with the comparisons drawn by the complainants between American and Canadian rates, in his letter of June 16, 1914, says:—

"The Winnipeg dealers have an advantage of 50 cents per 100 pounds, or 16½ per cent, in the rate as against Boston. Besides, at Boston there is an additional charge of 15 cents per 100 pounds for delivery service, whereas at Winnipeg such service is performed free."

In view of the above submissions, it is obvious that this point now considered is not open to the company, and effect cannot be given to it.

Dealing with the first and second grounds on which the proposed supplements are supported, namely, the question of low rate and competition, it must be admitted that the rates are low rates, but they are not competitive rates in the sense that the term is ordinarily used.

As I see it, the reason why these rates are low is the fish market. The competition is a trade competition in selling western fish, on the one hand, as against eastern fish on the other; and, in order to get western fish into eastern territory where it can be sold at a reasonable rate, low fish rates from the west are necessary.

In any event treating the rates as strictly competitive simply because the American companies do not give a free delivery is, under the circumstances of this case, no reason why the express companies here should now stop the deliveries which they have in the past made, and should change standard express practice.

Speaking generally, the essential characteristics of express as against freight service are accelerated service, supervision during movement, and delivery.

The real reason advanced why the latter characteristic, namely, delivery, should now cease is that the rates themselves are low and unremunerative.

This may or may not be the case. In the present record that issue is not made out. In my view, the company's remedy, if any, lies in making such application as it may think it can support, with a view of obtaining a higher rate.

I would make absolute the suspensions already made.

Specific references are made to the Dominion Express Company. The other express companies will, however, be bound by this judgment.

OTTAWA, March 15, 1918.

The Assistant Chief Commissioner, the Deputy Chief Commissioner, and Commissioner Goodeve concurred.

File No. 25547-14.—Coal Rates.

JUDGMENT.

THE CHIEF COMMISSIONER.

This is a complaint from municipalities and users of coal in what is generally referred to as the Waterloo County group. The city of Guelph also joins in the complaint. A hearing has taken place, and the matter has stood pending a final decision in the advanced rates case.

The whole question of coal rates is very difficult to adjust properly in the district of western Ontario, in view of the obvious water competition open to towns on the lakes.

The complexity of the situation is in part covered by the judgment in the Eastern Rates, pp. 178-187. In view of the fact that the whole situation is so much covered in that case, I do not deem it advisable to give further grounds, but would simply adopt the report of Mr. Hardwell, the Board's chief traffic officer, in which I fully concur.

As a result of adopting the report, the different municipalities are placed on as close a basis of parity one with the other as, in my opinion, it is possible to obtain.

Mr. Hardwell's report reads:—

“On the assumption that the new tariffs become effective on the 15th instant, I now beg to report as follows:—

“The increase of 15 cents per ton in the Galt rate, raising it from 88 cents to \$1.03 per ton, affords a basis for realignment. Having regard to the rate to Brantford, which was the real origin of the subsequent difficulties, as explained at page 182 of the Eastern Rates Judgment, I would not change this new Galt rate. Galt is not one of the complainants.

"Preston and Hespeler formerly had the Galt rate, but were advanced to 5 and 7 cents above Galt; distances 4.1 and 7.4 miles respectively. I would now restore them to the Galt group.

"Guelph is 16.2 miles from Galt, and formerly took the same rate; but the judgment placed it at 11 cents over Galt. I would reduce this difference to 5 cents, so as to make the new rate \$1.08 instead of \$1.14.

"I am unable to see my way to recommending any change to Kitchener. It is true that it also enjoyed the same rate as Galt, although the extra mileage is 27.7. Both judgments place it at 11 cents higher, the new rate being \$1.14. Were this reduced, the same rate to Stratford would necessarily also have to be reduced, Stratford being 8 miles nearer Black Rock, as well as to the intervening towns of Petersburg, Baden, New Hamburg, and Shakespeare, and the reduction would be reflected to St. Mary's and thence to London.

"Again, Woodstock has an advantage in distance of 21 miles from Black Rock compared with Kitchener, so that as both have the same rate the same reduction would follow to Woodstock and Ingersoll, and here, also, would be reflected to London.

"These examples show how the rates are interrelated and the extent to which the tariff structure would be affected if all the requests were granted.

"Waterloo is but one mile branch line distance from Kitchener and has always had the Kitchener rate. The new tariff continues this arrangement.

"Elmira is 10 miles beyond Waterloo and is the terminus of the branch. Its rate was formerly 10 cents over Waterloo, and the new tariff makes the difference 11 cents, but the change is so slight that I do not consider that the tariff should be interfered with, particularly as the Canadian Pacific's Goderich branch would be affected, not to speak of Fergus and Elora which are in the same territory and with distances from Black Rock in their favour.

"Adjudication must, in my opinion, take locations and distances into account, without undue regard to past voluntary practice. Clearly, also, the purpose of the last judgment of the Board should be kept in view, and the extent to which that purpose would be voided by the ramifications I have referred to. That with the exception of Guelph the complaining centres are all in the county of Waterloo has, I submit, no practical bearing on rate making.

"As regards the competition between the towns in this Waterloo County group and the argument for equality of rates throughout, the reminder is not needed that this Board and the Interstate Commerce Commission have repeatedly held that it is not the province of regulation to require commercial equality to the disregard of distances and routes.

"It was contended that the distance to Kitchener should be reckoned over the 15th district through Blair and Doon as if the Grand Trunk had bridged the Grand river at Galt, but that branch has no connection with the main line at Galt, the traffic moving over the 22nd district through Preston to Guelph Junction, and thence west to Kitchener.

"I should mention that many of the distances quoted by complainants are those from Suspension Bridge; but, as the Board is aware, the great bulk of the coal movement is through Black Rock.

"The following table tells the whole story. The mileages are from Black Rock. The column headed "Old" gives the rates which preceded the Eastern Rates judgment, the "E.R.C." column the rates of that judgment, and the column headed "15 cents" the 15 cents per ton increase recently granted. The last column shows the rates herein recommended to the disputed destinations underlined:—

To—	Miles.	Cents. Old.	Cents. E.R.C.	Cents. 15 Cents.	
Brantford.. . . .	74	70	77	92	—
Galt.. . . .	92	90	88	103	103
Preston.. . . .	96	90	93	108	103
Hespeler.. . . .	99	90	95	110	103
Guelph.. . . .	108	90	99	114	108
Georgetown.. . . .	93	80	88	103	—
Kitchener.. . . .	120	90	99	114	114
Stratford.. . . .	112	90	99	114	—
Woodstock.. . . .	99	90	99	114	—
Waterloo.. . . .	121	90	99	114	114
Elmira.. . . .	131	100	110	125	125
Elora.. . . .	120	100	110	125	—
Fergus.. . . .	123	100	110	125	—

Order to go accordingly.

March 15, 1918.

The Assistant Chief Commissioner and Commissioner McLean concurred.

ORDER No. 27004.

In the matter of the application of the Bell Telephone Company of Canada, herein-after called the "applicant company," under sections 247 and 248 of the Railway Act, for authority to construct, maintain, and operate its lines of telephone, installed in and by underground conduits, in certain streets in the city of Ottawa, particularly hereinafter-described; and for permission to attach two iron pipes to the abutments of Cummings bridge and to lay six conduits across Cummings island, with manhole in the centre, as shown on the plans on file with the Board under file No. 20191.2.

MONDAY, the 28th day of January, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, December 18, 1917, in the presence of counsel for the city of Ottawa and the county of Carleton, and what was alleged; and upon reading the further submissions filed,—

It is ordered:

1. That the applicant company be, and it is hereby, authorized to construct, maintain, and operate its lines of telephone, installed in and by underground conduits, on the following streets, in the city of Ottawa, county of Carleton, and province of Ontario, namely:—

Besserer street, from King Edward avenue to Charlotte street, with the necessary branches as follows:—

A branch from the manhole at the corner of Nelson and Besserer streets to a pole on the south side of Besserer street east of Nelson (about 24 feet).

A branch from the manhole on the corner of Besserer and Friel streets east to a pole on the south side of Besserer street (about 95 feet).

A branch from the manhole at the corner of Besserer and Chapel streets to a pole on the south side of Besserer, east of Chapel (about 24 feet).

A branch from the manhole at the corner of Besserer and Augusta streets to a pole on the south side of Besserer, east of Augusta (about 150 feet).

A branch from the manhole at the corner of Besserer and Cobourg streets to a pole on the south side of Besserer, east of Cobourg (about 130 feet).

Gloucester street, from Elgin street west to a pole on the south side (about 150 feet).

Gloucester street, from Kent street west to a pole on the south side (about 150 feet); the applicant company to tunnel under the new asphalt pavement at this point.

Nepean street, from Bay street east to a pole on the north side (about 150 feet).

Lady Grey road, from the applicant company's manhole on Rideau street, opposite the Corry building, to a point near the north end of the A. E. Rea building.

2. That the applicant company be, and it is hereby permitted to attach two iron pipes to the abutments of Cummings bridge, and to lay six conduits across Cummings island, with a manhole in the centre, as shown on the plan on file with the Board under file No. 20191.2, subject to and upon the conditions following, namely:—

(1) The overhead wires and their attachments on the bridge to be removed not later than September 1, 1918.

(2) If and when a new bridge is constructed, the expense of any relocation of the wires of the applicant company, or of its wires, attachments, or works which may be necessitated by the construction of such bridge, shall be borne by the applicant company.

D'ARCY SCOTT,
Assistant Chief Commissioner,

ORDER No. 27052.

In the matter of the application of the Kettle Valley Railway Company, hereinafter called the "applicant company," under section 340 of the Railway Act, for approval of a standard form, being a release to be signed by persons who, for special reasons, desire to travel in cars which are not intended to carry passengers.

File No. 28518.

THURSDAY, the 7th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the following form of release of liability in respect of travelling in non-passenger cars, for use by the applicant company, be, and it is hereby, approved, namely:—

"RELEASE OF LIABILITY IN RESPECT OF TRAVELLING IN NON-PASSENGER CARS.

"In consideration of the Kettle Valley Railway Company permitting me, at my request, to travel between.....and..... or for part of this distance, in a car not intended to carry passengers, which I am not entitled by law to do, I do hereby release and discharge the said company of and from all claims and demands of whatsoever nature which I may now or at any time hereafter have or could maintain by reason or on account of any loss, damage, or injury, to person or property which I may sustain or suffer in getting to or from, or on or off, any such car, or while travelling in any such car, or in any manner in connection with or as a consequence of the journey so made, whether any such loss, damage, or injury be caused by negligence or otherwise.

"Dated at this day of.....A.D. 19.....

"Witness:

"....."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27062.

In the matter of the application of the Canadian Northern Railway Company, hereinafter called the "applicant company," for authority to make certain reductions in its passenger train service between Quebec and Chicoutimi.

File No. 27563.3.

SATURDAY, the 9th day of March, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

Upon hearing the application at the sittings of the Board held in Quebec, March 7, 1918, in the presence of counsel for the applicant company and certain communities along the said portion of railway, the Quebec Board of Trade being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27067.

In the matter of the complaint of T. G. Thynne, of Penstowe Ranch, Otter Valley, Merritt, British Columbia, against the accommodation furnished by the Vancouver, Victoria and Eastern (Great Northern) Railway Company at Manning Siding, at present used by the Kettle Valley Railway Company; and the Order of the Board No. 26990, dated February 16, 1918, made herein.

File No. 28061.

FRIDAY, the 15th day of March, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed on behalf of the Kettle Valley Railway Company, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Vancouver, Victoria & Eastern Railway and Navigation Company be, and it is hereby, required to install a box-car body as a shelter at Manning Siding, in the province of British Columbia; the work to be completed by the 1st day of May, 1918; and the said Order No. 26990, dated February 16, 1918, is hereby rescinded.

D'ARCY SCOTT,
Assistant Chief Commissioner,

ORDER No. 27069.

In the matter of the application of the Pere Marquette Railroad Company, hereinafter called the "applicant company," for permission to cancel the Canadian Northern Railway Company as a party to its Tariff C.R.C., No. 2048.

File No. 1026.2.

SATURDAY, the 16th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application, the Page Wire Fence Company of Ontario, Limited, and the McGregor Banwell Fence Company, Limited, offering no objection; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby authorized to cancel the Canadian Northern Railway Company as a party to its tariff C.R.C. No. 2048.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27085.

In the matter of the application of the Montreal Board of Trade, on behalf of the Dominion Flour Mills, the Ogilvie Flour Mills, and the St. Lawrence Flour Mills, for an order disallowing the portion of the following Canadian Pacific Railway Company's tariffs: Supplement No. 33 to C.R.C.E.-1196, Supplement No. 6 to C.R.C.E.—3120, Supplement No. 1 to C.R.C.E.-3137, Supplement No. 1 to C.R.C.E.-3214, cancelling the milling-in-transit arrangement on grain milled at Montreal, Que., and reshipped to points on the Canadian Government Railways, also at Halifax, N.S., for export; and the Order of the Board No. 25904, dated February 26, 1917.

File No. 1179.33.

MONDAY, the 18th day of March, A.D., 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what was filed subsequent to the hearing held in Ottawa, February 21, 1917, in support of the application and on behalf of the Canadian Pacific Railway Company; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is Ordered: That the transit arrangements at Montreal applicable to grain from Western Canada handled by the Canadian Pacific Railway Company via the all-rail or lake-and-rail routes, the products of which are reshipped to destinations on or via the Intercolonial Railway, or for export via Halifax, which were sought to be cancelled and withdrawn by the said railway company by certain supplements to its tariffs appearing in the recital hereto, be continued on a uniform basis of a charge of 2 cents per 100 pounds for the stop-over services at Montreal; the said charge to be an addition to the published tariff rates from Port Arthur and Fort William, or from the lake ports, as the case may be, to the destinations of the products of the said grain.

And it is also Ordered: That, upon the publication and filing of the tariffs to give effect to this order, the order of the Board No. 25904, dated February 26, 1917, be, and it is hereby, rescinded.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27076.

In the matter of the order of the Board No. 8408, dated October 20, 1909, approving of by-law No. 95, passed at a meeting of the Board directors of the Canadian Pacific Railway Company, on the 5th day of October, 1909, authorizing James Kent, the manager of telegraphs of the company, to prepare and issue tariffs of telegraph tolls to be charged by the applicant company for all telegraph traffic.

File No. 11476.

TUESDAY, the 19th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading the amendment to the said by-law No. 95, dated March 11, 1918, filed by the Canadian Pacific Railway Company,—

It is ordered: That the said Order No. 8408, dated October 20, 1909, be, and it is hereby, amended by substituting the name of "John McMillan" for that of "James Kent," in the order.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27084.

In the matter of the complaints of the Board of Trade of Toronto and the William Davies Company, Limited, of Toronto, against the charge of \$5 a car for a stop-off for completion of loading of live stock.

File No. 27359.1.

TUESDAY, the 19th day of March, A.D., 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*D'ARCY SCOTT, *Assistant Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaints at the sittings of the Board held in Ottawa, March 19, 1918, the complainants and the Pere Marquette Railroad Company being represented at the hearing, and what was alleged,—

It is Ordered: That the stop-over charge of \$5 a car for completion of loading of live stock be, and it is hereby, disallowed; and that the Pere Marquette Railroad Company be, and it is hereby, required, within one week from the date of this Order, to publish and file a new tariff showing a stop-over charge of \$3 a car.

D'ARCY SCOTT,
Assistant Chief Commissioner.

GENERAL ORDER No. 222.

In the matter of the complaint of the Canadian Manufacturers' Association, on behalf of the packing industry, that railway companies refuse to accept oleomargarine as part of the minimum weight of packing-house products, loaded in so-called pedlar cars on private sidings.

File No. 18855.22.1.

TUESDAY, the 19th day of March, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*D'ARCY SCOTT, *Assistant Chief Commissioner.*HON. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, March 19, 1918, the Canadian Manufacturers' Association, the Canadian Freight Association, the Toronto Board of Trade, the Pere Marquette Railroad Company, and the Canadian Pacific, Grand Trunk, and Canadian Northern Railway Companies being represented at the hearing, and what was alleged,—

It is ordered: That the tariffs of the said railway companies providing for the transportation of packing-house products, fresh meats, and other articles in pedlar cars, be revised so as to include oleomargarine as packing-house products.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27081.

In the matter of the complaints of the city of Guelph, the Boards of Trade of Preston, Hespeler, Kitchener, Waterloo, and Elmira, and the Hall-Zryd Foundry Company and the R. Forbes Company of Hespeler, that the rates on coal from the frontier gate-ways are excessive and discriminatory.

File No. 25547.14.

THURSDAY, the 21st day of March, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*D'ARCY SCOTT, *Assistant Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon hearing the complaints at the sittings of the Board held in Toronto, December 11, 1916, the city of Guelph, the Boards of Trade of Preston, Kitchener, and Montreal, the Dominion Sugar Company, the Canadian Buffalo Forge Company, the Consolidated Rubber Company, the Canadian Manufacturers' Association, and the Canadian Retail Coal Association being represented at the hearing, and what was

alleged; and upon reading the further written submissions filed, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is Ordered: That the rates published on coal, in car loads, from Buffalo, Black Rock, and Suspension Bridge, New York, to Preston, Hespeler, and Guelph, Ont., in Grand Trunk Railway Company's Tariff C.R.C. No. E-3766 and Michigan Central Railroad Company's Tariff C.R.C. No. 2748, which became effective March 15, 1918, be, and the same are hereby, disallowed.

And it is further Ordered: That in lieu thereof the following rates be published.

To Preston—\$1.03 per ton of 2,000 pounds.

To Hespeler—\$1.03 per ton of 2,000 pounds.

To Guelph—\$1.08 per ton of 2,000 pounds.

D'ARCY SCOTT,
Assistant Chief Commissioner

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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OTTAWA, March 7, 1918.

Ogilvie Flour Mills Company et al. v. Canadian Pacific Railway.

File 1179.33.

REPORT OF CHIEF TRAFFIC OFFICER.

This is an application of the Montreal Board of Trade on behalf of the Ogilvie Flour Mills Company, the Dominion Flour Mills Company, and the St. Lawrence Flour Mills Company, for the maintenance of the arrangement whereby the Canadian Pacific Railway carried western grain, either all-rail or ex-lake, to products destinations on the Intercolonial, via Ste. Rosalie Junction, with the milling-in-transit privilege at Montreal.

The company sought to restrict the arrangement to their own destinations in Quebec and New Brunswick by cutting out Intercolonial stations from March 3, 1917, by supplements to the various tariffs applicable. These cancellations were suspended and necessary provision made by Order No. 25904 of February 26, 1917, following the hearing on the 21st February at Ottawa. The tariffs referred to in the order have since been superseded by others to give effect to the judgment dated July 17, 1917, in the application of the railway companies for a general increase in rates on grain and grain products east of Fort William, supplementing the judgment in the Eastern Rates Case.

The stop-over or transit charge added to the through-rates was 1 cent per 100 pounds on the all-rail grain, whether the products were for domestic consumption or for export from Halifax, and on the ex-lake grain 1 cent for export and 2 cents for domestic consumption. By Order 26642 of October 16, 1917, the last-mentioned 2-cent charge was reduced to 1 cent, so that this is now the uniform charge so far as the Canadian Pacific Railway is concerned.

The railway company takes the position that this traffic to Intercolonial points is unremunerative because of the rate division and the exceptional services necessary to reach the mills of the applicants.

As concerns the division of the rate, the Montreal situation is not singular. The eastern arbitraries added to the rates from Fort William, Port McNicoll or Goderich to Montreal are for the purpose of striking the through rates; the allocation as between the Canadian Pacific Railway to Ste. Rosalie Junction and the Intercolonial is on a percentage basis, so that it is not unusual for the Canadian Pacific Railway

local to Montreal to be shrunk, as explained by Mr. Flintoft. The figures are precisely the same whether the grain be milled at Montreal or at any milling point west of Montreal, and Ste. Rosalie Junction is the common point of transfer to the Government line. If, therefore, the line earnings are unremunerative, as claimed, in connection with the Montreal mills, they must be unremunerative in connection with all the Ontario mills, but no such claim is advanced.

The only feature that differentiates Montreal is the additional service entailed in reaching the mills. These are located on the Lachine Canal North Bank siding or branch, built and operated by the Grand Trunk for itself and the Canadian Pacific Railway under lease from the Crown. The Canadian Pacific Railway transfers to this siding at Atwater transfer near its Highlands station. The distance from the transfer to the Ogilvie mill is given as 5.2 miles; the distance to the "Dominion" mill is somewhat less, but to the other Ogilvie plant at Mill street, where Mr. Black said the bulk of the business was done, it is greater. (The latter mill is not indicated on the plan.)

Mr. Flintoft predicated his distance on a movement of the grain to the Outremont yard, whence to Atwater transfer the distance is stated to be 6.7 miles, making 11.9 miles in all. But the grain, whether all-rail or ex-lake, moves over the Smiths Falls subdivision, and if, instead of going directly into Sortin yard, it is taken for operating purposes to Outremont, it does not appeal to me as a movement that should properly be debited to the traffic.

The out-of-line haul between the transfer and the Ogilvie mill, grain in and flour out, is 10.4 miles. The plan gives the distance between the transfer and Sortin as 2 miles each way; but, on the other hand, more or less shunting has to be done at all milling points after the grain gets into the terminal.

Mr. Flintoft gave the actual cost of handling cars on the Canal Bank branch as \$1.30 per car paid the Grand Trunk for the year ended November 30, 1916, or \$2.60 for the double movement. This is no doubt the result of the basis of division of costs of operation and maintenance directed in the Board's Order 9759 of February 17, 1910.

Mr. Flintoft's estimate that three cars are required to ship out the products of two carloads of inward grain has no particular bearing, since it must, if correct, apply everywhere.

Undoubtedly, the millers in question necessarily require, from the Canadian Pacific Railway at least, an unusual service for which they should be prepared to pay an adequate compensation. The Board did not, of course, intend its Order 26642 to settle this complaint. By items 122 and 141 of its Special Tariff of Rules and Regulations C.R.C. No. 3280 the company makes in certain cases an out-of-line extra charge of 1 cent per ton per mile, with a minimum as for 20 miles. Applied to the present case this would give a charge of 1 cent per 100 pounds in addition to the ordinary mill stop-over toll of 1 cent paid by all transit millers, and it would not be more even if the Outremont mileage were used. In other words, the transit charge of 2 cents as desired would be continued on grain ex-lake milled for domestic consumption, and the charge for export, also for all-rail domestic, would be increased from 1 cent to 2 cents. This in my opinion, ought to be satisfactory to all parties.

Mr. Flintoft complained that this traffic was thrown entirely on his company, and I consider there is justice in his complaint. The Grand Trunk has no milling-in-transit arrangement in connection with the Intercolonial, although its local facilities are superior to those of the Canadian Pacific Railway. I mentioned in my memo. of February 23, 1917, on the file, that the Intercolonial and Grand Trunk were negotiating an arrangement and that I expected it would be consummated, but it has not.

Respectfully submitted,

J HARDWELL,

Chief Traffic Officer.

The report was adopted by the Board.

Complaint of the West Virginia Pulp and Paper Company, and others, against the rates on pulpwood shown in Canadian Pacific C.R.C. No. E-2847, to Mechanicville, N.Y., via Boston and Maine; also Delaware and Hudson; also against same company's rates to Delaware and Hudson points shown on page 3 in Supplement 15 to the same tariff, said rates having been suspended by Board's Order No. 25262, dated August 16, 1916.

JUDGMENT.

File No. 27036.

Mr. COMMISSIONER McLEAN:

The West Virginia Pulp and Paper Company requested an order disallowing, in so far as rates to Mechanicville, N.Y., were concerned, Canadian Pacific Railway Tariff C.R.C. No. E-2847, effective September 10, 1914, and supplement thereto No. 7, effective November 1, 1915 (repeated in the Supplement 12 referred to in the application), applying on pulpwood from Canadian Pacific Railway points to various United States destinations, principally in eastern New York state.

Subsequently, by Supplement 15, issued July 28, to take effect September 1, 1916, the rates were increased 1 cent per 100 pounds from the territory west of Montreal taking the routes via Ottawa or St. Polycarpe Junction, thence Grand Trunk Railway to Rouses Point, N.Y., where a connection is made with the Delaware and Hudson Railroad.

Order No. 25262, issued August 16, 1916, suspending the last-mentioned supplement on the application of the W. V. P. and P. Co., the Ticonderoga Pulp and Paper Company of Ticonderoga, N.Y., and the New York and Pennsylvania Company of Willsboro, N.Y., these two points, with Mechanicville, being, it was stated, practically the only Delaware and Hudson points taking Canadian pulpwood. The Mountain Lumber Company, of New York, subsequently intervened as complainants.

The present application is complementary to the decision of the Board in *International Paper Co. v. G.T.R., C.P.R., and C.N.R. Cos., 15 C.R.C., 111*. That case was concerned with export rates on pulpwood from the territory east of what is involved in the present application. It was there recognized that the area in question was one in which water competition had exercised a serious influence on rates. It was further recognized that with the lessening of water competition the railways were within their rights in bringing the rates up more closely to the normal conditions.

There is, first, the original complaint of the West Virginia Pulp and Paper Company against the current rates of the Canadian Pacific Railway Company and its connections on pulpwood from Canadian Pacific stations in Canada to Mechanicville, in the state of New York; and, second, the application of the West Virginia Pulp and Paper Company, the Ticonderoga Pulp and Paper Company, and the New York and Pennsylvania Company for the suspension of Supplement No. 15, above referred to, containing increased rates on pulpwood from Canadian Pacific stations to Mechanicville, N.Y. (the location of the paper mills of the West Virginia Pulp and Paper Company); to Willsboro, N.Y. (the location of the paper mills of the New York and Pennsylvania Paper Company); and to Ticonderoga, N.Y. (the location of the Ticonderoga Pulp and Paper Company's paper mills). All these destination points are on the railway of the Delaware and Hudson Railway Company.

In the original complaint as launched, applicants contend that the rates from shipping points on the Canadian Pacific Railway in the Ottawa Valley district to the paper company's mills were unreasonably high, particularly when consideration was given to the fact that if no through rates were in effect the Canadian Pacific Company's proportionals, by the furtherance discount of 1 cent from its locals, would be lower than the company receives under the through tariff; and in this connection it was contended that the rates from points on the Maniwaki subdivision were unreasonably high as compared with rates from similar points on other branches of the Canadian Pacific Railway Company.

The supplemental complaint referred to the rate increase of 1 cent which is stated to cover shipping points which may be roughly described as located in the Ottawa Valley district; that is to say, in the general territory along the Canadian Pacific lines west of Ottawa and St. Polycarpe Junction.

In summary form, it is contended that the rates as existing before the supplement referred to was filed, were unjust, unreasonable and discriminatory, and that the increased rates were unjust and unreasonable.

The movement concerned is a three-line haul. From varying points of origin on the Canadian Pacific, the traffic moves either to Ottawa or St. Polycarpe Junction, where it is handed over to the Grand Trunk; thence the movement is to Rouses Point, where it is handed over to the Delaware and Hudson Railroad Company.

Exhibit 3, filed by the railway company, covering movements from December 1, 1915, to May 31, 1916, gives detail as to the movement of traffic to Ticonderoga, Willsboro, and Mechanicville. This enables characteristic averages to be struck based upon the relative importance of the points shipping pulpwood.

The applicants, in a rate comparison later to be referred to, base their figures on the movement to Willsboro. From Ottawa to Rouses Point is a distance of 131 miles, while from Rouses Point to Willsboro is 49 miles. This would make a mileage movement, Grand Trunk and Delaware and Hudson, of 180 miles. Where the traffic is taken over by the Grand Trunk from the Canadian Pacific at St. Polycarpe Junction, the distance from St. Polycarpe to Rouses Point is 59 miles, which would make a two-line movement of 108 miles. A table is submitted in this connection by the applicants as follows:—

Table showing from twelve representative pulpwood shipping points (1) average distances to the northern group of Hudson River mills; (2) present rates on pulpwood; (3) Canadian Pacific Railway divisions; (4) Grand Trunk Railway divisions; and (5) Delaware and Hudson divisions:—

From—	Distance Miles.	Through rate. Cents.	C. P. R. Divisions. Cents.	G. T. R. Divisions. Cents.	D. & H. Divisions. Cents.
Glen Tay..	212.0	11	5	3	3
Maberley..	223.1	11	5	3	3
Kazabazua..	227.0	11	5	3	3
Campbell's Bay..	236.4	11	5	3	3
Oso..	236.6	12	6	3	3
Gracefield..	239.2	12	6	3	3
Fort Coulonge..	247.9	11	5	3	3
Kaladar..	258.2	13	7	3	3
Calabogie..	263.6	12	6	3	3
Clyde Forks..	276.6	12	6	3	3
Wylie..	310.9	11	5	3	3
Mattawa..	377.9	13	7	3	3

NOTE.—Distance from Ottawa to Rouses Point.. 131 miles.
 " " St. Polycarpe Junction to Rouses Point.. 59 "
 " " Rouses Point to Willsboro.. 49 "
 " " Rouses Point to Northern Group of Hudson River Mills. 48 "

The comparisons contained in this table are based on the movement to Willsboro. It is contended by the applicants that the movement to this point is the most representative in determining the earnings of the Canadian lines. It is stated that the rate to Mechanicsville is in every instance one-half cent higher than the rate to Willsboro and other points in the Northern Group, and that this one-half cent accrues entirely to the Delaware and Hudson Company. It is admitted that it may be that on the haul to Mechanicville the earnings of the Delaware and Hudson Company per ton per mile are lower than its earnings on the haul to Willsboro, but this, the applicants submit, is a matter which concerns the Delaware and Hudson Company alone, and is not relevant to the issues in the present case.

The fact that the Delaware and Hudson does blanket the main line north of Mechanicville at a half-cent lower rate is a question of that company's traffic policy, with which we need not be concerned aside from the actual movement.

Exhibit 3 covers a total movement of 2,529 cars. Of these, 984, or 34 per cent, move to Mechanicville, and 333, or 13 per cent, move to Willsboro.

A further analysis of the detail contained in this exhibit is of interest. The detail covers the Waltham subdivision, the Maniwaki subdivision, the Ontario division, the Chalk River subdivision, and Lake Superior division. The movement of cars of pulpwood from the various subdivisions to the points referred to in the exhibit are by percentages as follows:—

Subdivision and Divisions—	Ticonderoga. Per cent.	Willsboro. Per cent.	Mechanicville. Per cent.
Waltham... .. To.	25	30	45
Maniwaki... .. “	53.7	0.4	45.9
Ontario... .. “	32	20	48
Chalk River... .. “	52	17	31
Lake Superior... .. “	48	15	37

Certainly, in view of the small movement shown from the Maniwaki subdivision to Willsboro, the comparison on this basis is not characteristic.

On the figures as given as to volume of tonnage, comparisons with Mechanicville would seem to be proper.

Dealing first with the question of discrimination alleged as between the Maniwaki and Waltham subdivisions, the railway company while admitting that the rates on the Waltham subdivision are on a lower level than those of the Maniwaki subdivision points out that there are different operating conditions. On the Maniwaki subdivision, a 105 per cent locomotive has a haulage capacity of 420 equivalent tons, whereas on the Waltham subdivision a similar engine has a capacity of 570 tons; that is to say, 35 per cent greater efficiency. The ruling grades are also heavier on the Maniwaki subdivision, being approximately twice as great.

The following sets out a rate comparison of various representative points on the two subdivisions:—

	Miles.	Cents.
Alcove... ..	329	11½
Farrellton... ..	334	11½
Low... ..	339	12½
Kazabazua... ..	351	12½
Gracefield... ..	364	13½
Blue Sea... ..	372	13½
Maniwaki... ..	387	13½
Parker... ..	328	10½
Quyón... ..	336	11½
Wyman... ..	339	11½
Shawville... ..	350	12
Campbell's Bay... ..	361	12½
Fort Coulange... ..	372	12½
Waltham... ..	383	12½

The Board in the *International Paper Case*, at p. 116, said:—

“As regards the rates of the Canadian Pacific Mount Laurier Branch, however the original rates of the Waltham and Nominig branches may have been constructed, considering the character of the Laurentian grades, the rates appear to be reasonably proportioned as between the Mount Laurier and Nominig sections, and with respect to the main line and other sections.”

(For “Nominig” read “Maniwaki,” the Maniwaki branch having been inadvertently referred to as the Nominig branch.)

A rate comparison of representative points on the Maniwaki and Laurentian subdivisions is as follows:—

	Miles.	Cents.
Alcove... ..	329	11½
Low... ..	339	12½
Venosta... ..	245	12½
Kazabazua... ..	351	12½
Gracefield... ..	364	13½
Lacoste... ..	327	11½
Loranger... ..	338	12
Hebert... ..	345	12
Campeau... ..	353	12
Mt. Laurier... ..	368	12½

Controlling factors in the case of the rates on the Laurentian subdivision are short mileage of the Grand Trunk from Jacques Cartier Junction, where it receives the traffic from the Laurentian subdivision to Rouses Point, and the further fact that this is competitive with the still shorter route via Delson Junction and the Napierville Junction Railway.

In dealing, then, with the Maniwaki subdivision, increases of rates, if found justified, should be subject to the rates for similar distances from points on the Laurentian subdivision as a maximum.

An analysis of exhibit 3 based on the more important shipping points, representing upwards of 90 per cent of the cars of pulpwood moving, gives the following average Canadian Pacific Railway mileages by divisions:—

	Miles.
Waltham subdivision..	61
Maniwaki subdivision..	48
Ontario Division (1)..	129
“ (2)..	113
Chalk River subdivision..	105
Lake Superior Division..	227

On the portion of the Ontario division numbered (1), the routing is via Ottawa. On the portion numbered (2), it is via St. Polycarpe. The Smiths Falls subdivision, for which detail is not given in this exhibit, on mileage points and irrespective of volume of traffic, averages 53 miles.

In making computations as to the rates as proposed, the Maniwaki sub-division rates are taken as held down by the Laurentian subdivision standard. The average mileage and rates on the three-line movement to Mechanieville are as follows:—

Via Ottawa from—	Average Distance.	Maximum Distance.	Average Rate. Cents.	Maximum Rate. Cents.
Waltham subdivision..	364	383	12.4	12.5
Maniwaki subdivision..	351	387	12.2	13.5
Chalk River sub-division..	407	430	12.5	12.5
Ontario division (1)..	416	460	13.5	14.5
Lake Superior division..	530	715	14.2	16.0
Via St. Polycarpe from—				
Ontario division (2)..	360	381	13.2	15.0
Smiths Falls subdivision	284	320	10.5	10.5

Under the arrangement existing prior to the filing of supplement No. 15, the Delaware and Hudson received as its division of the through rate $3\frac{1}{2}$ cents; the Grand Trunk 3 cents, regardless of whether the routing was via Ottawa or via St. Polycarpe Junction; and the balance went to the Canadian Pacific. Under supplement No. 15, which provided for the 1-cent increase to the Waltham, Maniwaki, Smiths Falls, Chalk River subdivisions and the Ontario and Lake Superior divisions, the increase accrues entirely to the Grand Trunk, and applicant points out that no satisfactory justification of this increase has been made by the Grand Trunk. The argument, however, in attacking the increase of 1 cent was in the main directed to the proportion of the through rates accruing to the Canadian Pacific. It is stated that the Canadian Pacific Company's proportion of the increased rate was unjust and unreasonable when tested by comparison with its local rates, or with the local rates of the Maine Central and Delaware and Hudson Railways.

As under the proposed new rates no greater revenue accrues to the Canadian Pacific Railway, the attack on the Canadian Pacific proportion is an attack on the through rate.

The division of the through rate as between carriers is a matter of domestic concern, and so long as the through rate itself is not unreasonable it does not matter to the public how the rate is subdivided. In the course of the hearing, it was pointed out by the Chief Commissioner, "They (complainants) are not interested in the divisions, they are interested in getting a reasonable rate." The Board, it is true, in the *Blind River Board of Trade Case*, 15 C.R.C., 146, did consider the question of

the division; but it is to be noted here that only one party to the through rate was subject to the Board's jurisdiction, and the control which could be exercised over the rate was limited to the division accruing to the party so subject.

Reference has been made to the fact that the Board in *Auger & Sons, and the D'Auteuil Lumber Co. v. C.P.R. and G.T.R. Co's 19 Can. Ry. Cas, 401*, held that the proportion of 7.7 cents to the Boston and Maine from Sherbrooke to Mechanicville, a single-line haul of 312 miles, was not unreasonable. In the present case, the movement by the Grand Trunk and Delaware and Hudson from Ottawa to Mechanicville, a distance of 303 miles, is, under supplement No. 15, proposed to be 7½ cents for a two-line haul. It is, however, contended by the applicants that this comparison is not justifiable, since the judgment in the *Auger Case* disclosed facts as to exceptional costs of operation and low earnings which have not been established in the present case.

Without accepting the division of the through rate as a measure of reasonableness, another test may be made. The Interstate Commerce Commission has dealt in *Pulp and Paper Manufacturers Traffic Assn. v. C. M. and St. P. Ry. Co., 27 I.C.C., 83*, with the question of through rates on pulpwood, and at p. 98 of the judgment sets out a table of maximum rates which are to be applied to the mileages of the various roads from points of origin to junctions with connecting carriers and to the gateways concerned in the application. Subject to what is later set out as to the applicability of the decisions of the Interstate Commerce Commission, the rates in question may be referred to as a test. They were introduced into the record by applicants in exhibit 9. Since under the proposed revision of rates no increase accrues to the Canadian Pacific, the test may be made against the Grand Trunk and Delaware and Hudson combination. Under the scale set out in the above judgment, the Grand Trunk mileage of 131 miles would be allowed 4.12 cents, while the Delaware and Hudson would be allowed 4.7 cents, a total of 8.82 cents for the joint haul of 303 miles. On the mileage of the movement via St. Polycarpe, the combination would be 7.6 cents.

Comparisons are made by the applicants of the proportion of the through rate received by the Canadian Pacific Railway with the local rates charged by it, and also with the net rate obtained by the railway when there is no joint rate, in which case there is on specified traffic a further discount of 1 cent from the locals.

The complaint in this regard is chiefly concerned with the rates from the Maniwaki subdivision. This subdivision supplies 24 per cent of the traffic covered by exhibit 3. Applicants' brief says: "We urge that in the absence of any general grouping of rates on pulpwood, based on well-defined territories, the rates should gradually increase in every direction in the same ascending scale, and that there is no justification for applying a more rapidly increasing scale upon the Maniwaki branch than on the Waltham branch." Applicants submit a tabular summary in support of this. The summary is as follows:—

MANIWAKI BRANCH.

From—	Distance to Willsboro.	Rate per Cwt. Cents.
Maniwaki.....	263.2	12
Gracefield.....	240.2	12
Marks.....	234.1	12
Aylwin.....	229.6	11
Kazabazua.....	228.0	11
Brennan.....	213.9	11
Farrellton.....	210.6	10
Kirk's Ferry.....	192.8	10
Chelsea.....	189.1	9

WALTHAM BRANCH.

From—	Distance to Willsboro.	Rate per Cwt. Cents.
Waltham.. . . .	259.4	11
Fort Coulange.. . . .	248.9	11
Campbell's Bay.. . . .	237.4	11
Morehead.. . . .	233.6	11
Shawville.. . . .	226.3	10½
Bristol.. . . .	219.7	10½
Wyman.. . . .	215.6	10
Mohr.. . . .	208.6	10
Parker.. . . .	204.6	9

It is to be noted that this is based on Willsboro mileage. It is also based on the tariff situation before the filing of Supplement 15.

For the reasons already indicated, the Mechanicville mileage is taken as more characteristic.

Averaging, however, the distances and rates set out in the table, this shows an average distance of 222 miles from Maniwaki subdivision points with a rate of 10.8 cents, as against 228 miles from Waltham subdivision points with an average of 10.5 cents.

Comparisons have been made between the proportions of the pulpwood through rates and the combination of the locals when reduction is made to produce a furtherance rate. The following table shows in column A the Canadian Pacific Railway proportions of the through rates under review, and in column B the locals to Ottawa reduced by 1 cent to produce the furtherance rates applicable on through shipments where through tariffs are not provided:—

	Miles.	A. Cents.	B. Cents.
Chelsea.. . . .	10	3	3
Kirk's Ferry.. . . .	13	4	3
Farm Point.. . . .	19	4	3
Wakefield.. . . .	23	4	3½
Alcove.. . . .	26	4	3½
Farrellton.. . . .	31	4	3½
Brennan.. . . .	34	5	3½
Low.. . . .	36	5	3½
Venosta.. . . .	42	5	3½
Kasabazua.. . . .	48	5	3½
Gracefield.. . . .	61	6	5½
Burbidge.. . . .	77	6	5½
Maniwaki.. . . .	84	6	5½

In justification of the lower level of the local lumber rates from Kasabazua and south, it is explained that water competition in respect of river-driving of logs to Ottawa is effective.

Comparison is made in exhibit 8 not only with the reshipment rate on pulpwood but also with the locals on forest products. Since neither the Canadian Pacific nor the Grand Trunk receives in connection with the movement in question any outbound manufactured and reshipped product, the rate which posits a manufacturing and reshipment condition cannot be taken as a proper measure of the rate situation where the railway has no such additional traffic advantage. See *International Paper Case at p. 114*.

If the contention were adopted that the furtherance rates should be the maximum, it is arguable that where the divisional rates are lower than said furtherance rates they might be advanced to said basis. If this were done, the rates would be advanced in 78 cases out of 122 shipping points included in the tariff and reduced in 28.

The positions taken as to the unreasonableness of the proportions of the through rate are not, on analysis, tenable. That is to say, this method of attack on the reasonableness of the through rate fails.

A comparison of the proposed through rates with those on other forest products results favourably to pulpwood, as follows:—

From—	Willsboro, Delano.		Mechanicville.	
	Lumber, etc.	Pulpwood.	Lumber, etc.	Pulpwood.
Maniwaki Branch.. . . .	11.6 to 14.7	10.0 to 13.0	12.6 to 15.8	10.5 to 13.4
Waltham Branch.. . . .	11.6 to 13.7	10.0 to 12.0	12.6 to 14.7	10.5 to 12.5
Renfrew-Bisco.	11.6 to 21.5	11.0 to 15.5	13.7 to 21.5	11.5 to 16.0
Apple Hill—				
Smith's Falls.. . . .	10.5 to 11.6	10.0	11.6 to 11.6	.... 10½

The following remarks of the Chief Commissioner in the Judgment in the *International Paper Case*, at p. 116 are particularly applicable to this table:—

“It is to be borne in mind that pulpwood would move under the lumber commodity tariff, which includes the rough forest products, if it had not been for the special rates previously put in force; and it is somewhat difficult to see that there should be a distinction made in favour of pulpwood as against these other commodities.”

The following tables compare the proposed pulpwood rates from the Maniwaki Branch to Mechanicville for Delaware and Hudson delivery, via Rouses Point, with those from other sections of the Canadian Pacific Railway. (If transferred by the Delaware and Hudson at Mechanicville for B. and M. delivery the rates are one-half cent higher.)

With the Havelock Subdivision—		Miles.	Cents.
Alcove.. . . .		329	11½
Low.. . . .		339	12½
Kazabazua.. . . .		351	12½
Gracefield.. . . .		364	13½
Burbidge.. . . .		376	13½
Maniwaki.. . . .		387	13½
Glen Tay.. . . .		335	12½
Bathurst.. . . .		339	12½
Sharbot Lake.. . . .		356	12½
Mtn. Grove.. . . .		366	13½
Arendale.. . . .		373	14½
Kaladar.. . . .		382	14½
With Valley Points West of Ottawa—			
Alcove.. . . .		329	11½
Low.. . . .		339	12½
Venosta.. . . .		345	12½
Kazabazua.. . . .		351	12½
Gracefield.. . . .		364	13½
Burbidge.. . . .		376	13½
Maniwaki.. . . .		387	13½
Kinburn (Grand Trunk).. . . .		330	10½
Arnprior, “		340	10½
Glasgow, “		347	10½
Goshen, “		351	10½
Douglas, “		368	11½
Eganville, “		378	11½
Golden Lake, “		386	11½

The only comparable shipping points are on the Grand Trunk, the Canadian Pacific hauls via Carleton Junction to Ottawa, which is the tariff route, being longer. The Grand Trunk route therefore fixes the rates, and the competitive character of this section removes it as a standard for comparison with the non-competitive Gatineau road.

Rates for identical or contiguous points on the Grand Trunk and the Canadian Pacific are controlled by the shorter line mileage of the Grand Trunk, for example:—

	Grand Trunk. Miles.		Canadian Pacific. Miles.
Douglas..	368	Douglas..	387
Callwell..	371	Fourth Chute..	391
Eganville..	378	Eganville..	396

It is also to be borne in mind that the hauls from Grand Trunk points set out in the tabular comparisons are two-line hauls to destination as compared with three-line hauls from Canadian Pacific initial points.

The next comparison with the Quebec subdivision is in a similar category. Apart from the difference of road alignment, favouring the Quebec section, the rates from the stations between Three Rivers and Quebec are the result of the competition of the water route by way of the river St. Lawrence, the Richelieu canal and the Champlain water system. This is referred to at page 113, *International Paper Case*. It follows:—

	Miles.	Cents.
Alcove..	329	11½
Farrellton..	334	11½
Low..	339	12½
Venosta..	345	12½
Gracefield..	364	13½
Maniwaki..	387	13½
La Perade..	330	11
Grondines..	337	11
LaChevrotiere..	341	11
Portneuf..	348	11
Trenholm..	364	11
Quebec..	383	11

Reference has been made by applicants, in an exhibit filed, to the decision of the Interstate Commerce Commission in *Pulp and Paper Manufacturers' Association v. C. M. and St. P. Ry. Co.* An exhibit was also filed setting out a lower scale of tolls on pulpwood directed, in intrastate movements, by the Wisconsin Commission. It may be pointed out that in striking its higher scale the Interstate Commerce Commission had the Wisconsin scale before it.

The decisions of the Interstate Commerce Commission are not conclusive in Canadian rate adjudications unless the circumstances involved are on all fours. *Manitoba Dairymen's Association v. Dominion and Canadian Northern Express Cos., 14 Can. Ry. Cas., 142, at p. 148.* The applicability of contentions based on United States experience must be established by evidence. *In re Western Tolls, 17 Can. Ry. Cas., 123, at p. 203.*

No evidence was adduced establishing identity of conditions as between the conditions before the Interstate Commerce Commission and those here involved. It would appear from the decision of the Interstate Commerce Commission that a much larger volume of traffic was concerned, there being a reference to shipments involved during one year amounting to 29,965 cars and averaging from 60,000 to 68,000 pounds per car.

Subject to all proper limitations, the rates as fixed by the Interstate Commerce Commission when applied to the Canadian mileages herein involved have, as set out in the following summary, a rough correspondence:—

Via Ottawa—	Average Mileage.	Average Rate.	I. C. C. rate on 3-line haul.
Waltham subdivision...	364	12.4	11.8
Maniwaki "	351	12.2	11.5
Ontario "	416	13.5	12.9
Chalk River, "	407	12.5	12.5
Lake Superior "	530	14.2	14.2
Via St. Polycarpe—			
Ontario division (2)	360	13.2	11.4
Smiths Falls subdivision	284	10.5	10.4

The Board, in the *Western Rates Case* decision, put in an especially low-rate basis on coal, the opinion being expressed that these coal rates "should be reduced to a basis as low as can be consistently directed;" and it was provided that for the joint hauls between points involving the services of two carriers the through rate should not be more than 20 cents per ton over and above that applicable to the through mileage as for one carrier.

In another case, evidence was submitted to the Board setting out that on small cars transfer charges would be about 20 cents per ton. The Board did not express an opinion as to whether a measure of a properly proportioned two-line rate was obtainable by adding such transfer charge to the rate for the single-line movement, but it was of opinion that this was a minimum transfer charge. It may be noted that in the Judgment "terminal" is, through inadvertence, used instead of "transfer." *Application Dominion Sugar Co. re rates on sugar, in carloads, Wallaceburg to Toronto, 17 Can. Cas., 231 at p. 239.*

The question of whether the admittedly exceptional character of the western coal movement is so exceptional as not to justify the further extension of the principle of building up a through rate by adding a transfer charge or charges is not here material, nor need the general question be discussed. The Board has in various cases recognized that a single line rate is not the measure of a rate for a movement over two or more lines, and it has also recognized that there are additional services and costs attaching to the two or three-line movements as distinguished from the one-line movement; and that, further, there is the question of the subdivision of revenues between two or three lines as compared with the movement over one line. *Continental, Prairie, and Winnipeg Oil Cos. v. C.P. et al, 13 Can. Ry. Cas., 156, at p. 159; International Paper Co. v. G.T. et al, 15 Can. Ry. Cas., 111, at p. 114; Dominion Sugar Co. v. G.T.R. et al, 17, Can. Ry. Cas., 240, at p. 244.*

Rates for single line movements on analogous commodities, which rates have been declared by the Board, after investigation, to be reasonable or have been directed by the Board to be used as reasonable rates for the future, may be taken as a test, subject to the recognition of additional transfer expenses.

In the *Eastern Rates Case*, the Board recognized a rate of 8½ cents per 100 pounds on pulpwood as being reasonable for a single line movement of 300 miles. Comparing the single-line rates, as thus approved, stepped for the appropriate distances, with the three-line movement herein involved, and adding 1 cent for transfer in each case, the following results are available:—

Via Ottawa— From—	Average Mileage.	Average Rate.	Single Line Pulpwood Rate.	Single Line Pulpwood Rate, plus Transfer.
Waltham subdivision	364	12.4	9.5	11.5
Maniwaki "	351	12.2	9.5	11.5
Chalk River "	407	12.5	10.5	12.5
Ontario division (1)	416	13.5	10.5	12.5
Lake Superior division	530	14.2	11.5	13.5
Via St. Polycarpe— From—				
Ontario division (2)	360	13.2	9.5	11.5
Smiths Falls subdivision	284	10.5	8.5	10.5

The single-line pulpwood rate is on a very low basis, being the same as for slabs, and is based on the idea of the railway having the movement out of the manufactured product—a factor which in the case of the Canadian Pacific and the Grand Trunk, at least, is not present in connection with the movement herein concerned. How low the rate is may be recognized from the fact that the rate on cordwood for the 300-mile distance is 9 cents as compared with the pulpwood rate of 8.5 cents, while the rate on logs for the same distance is 10.5 cents.

Pulpwood may be taken as roughly comparable in value with wood ashes, which in the complaint of *Charles Stevens, of Napanee, Ont., file 26916*, were set out as being worth from \$4 to \$6 per ton. The Board there held that for a single-line haul in the 250-mile group a rate of 10 cents was justifiable. Stepping this rate up for the appropriate groups and adding transfer charges for the additional line hauls, the following detail is available for the grouping of the divisions as already explained:—

	Average Rate.	Single Line Rate on Wood Ashes.	Single Line Rate on Wood Ashes plus Transfer Charges.
Waltham subdivision	12.4	12.0	14.0
Maniwaki "	12.2	12.0	14.0
Chalk River "	12.5	12.5	14.5
Ontario division (1)	13.5	12.5	14.5
Lake Superior division	14.2	13.5	15.5
Ontario division (2)	13.2	12.0	14.0
Smiths Falls subdivision	10.5	11.0	13.0

It is further to be noted that the basis given wood ashes is one where the railway has the advantage of the reshipment out of the higher valued fertilizer product, in connection with which the wood ashes are used.

The Board has also passed upon the question of coal rates. It could not be consistently claimed that there is an identity of conditions between coal and pulpwood. In the present case, the average loading for the pulpwood is 48,000 pounds. Coal normally would have a much heavier loading, but as this would be a factor tending to give the coal a lower rate basis the comparison is not unfair to pulpwood.

In the *Eastern Rates Case*, the Board held as reasonable a rate of 13 cents on coal from Black Rock to Madawaska, a distance of 333 miles. While this is a single-line haul, it must be remembered that it is a proportional for a single-line haul, as there is in addition the rate from the mine to Black Rock. The three-line haul on pulpwood ex Maniwaki subdivision averages 12.2 cents, as held down by the Laurentian standard for 351 miles, with a maximum of 13.5 cents for a maximum haul of 387 miles.

The Board, on the application of the *Sudbury Board of Trade, file 11479*, which was dealt with in 1910, held that a rate of 13 cents should be put in for a three-line haul of 359 miles from Black Rock. Here, again, there is a rate beyond from the mine to Black Rock. The maximum rate of 16 cents in the pulpwood tariffs is for a three-line haul of 715 miles from the Lake Superior subdivision.

In the *Auger case*, at p. 409, the Board held that a rate comparison between the rates on brick and those on pulpwood as a test of reasonableness was justifiable. In the *Western Rates Case*, the Board found that the rates on brick in the west were lower than east of the lakes. The rates as charged were found reasonable, subject to directions as to the rearrangement of the initial group, and extension of the tariffs so as to cover "prairie" territory. These rates on common brick may be used as a test as set out in the following table in accordance with the practice already explained:—

	Average Distance.	Average Rate.	Single Line Rate on Brick.	Single Line Rate on Brick plus Transfer Charges.
Waltham subdivision.. . . .	364	12.4	11.0	13.0
Maniwaki " " " " " "	351	12.2	11.0	13.0
Chalk River " " " " " "	407	12.5	12.0	14.0
Ontario division (1).. . . .	416	13.5	12.0	14.0
Lake Superior division.. . . .	530	14.2	14.0	16.0
Ontario division (2).. . . .	360	13.2	11.0	13.0
Smiths Falls subdivision.. . . .	284	10.5	9.5	11.5

Considering what has been approved on analogous commodities on single-line movements, the rates on other forest products, and also the fact that the Canadian Pacific and the Grand Trunk have no reshipment advantages and revenues accruing therefrom, the increase of 1 cent as provided for in supplement No. 15 is not unreasonable.

On the Kingston subdivision, the rate from Snow Road and Levant violates the long-and-short-haul clause, whether by the actual route via Renfrew or by the shorter route via Sharbot Lake. The proposed rate of 14½ cents should be reduced to 13½ cents. Reflecting this branch line rate on to the main line for similar distances, Arden-dale and Kaladar should continue on the present basis of 13½ cents, instead of advancing to 14½ cents as proposed.

As already indicated, the proposed rates from the Maniwaki subdivision are to be reduced where necessary, so as not to exceed the existing rates for similar distances from points on the Laurentian subdivision.

The tariffs have been under suspension for a considerable period of time. In view of the time that has thus elapsed, the parties applicant have had ample notice of the effect of the tariffs. The movement concerned being an international one, the filing requirements of the Interstate Commerce Commission must be recognized. Subject to the requirements of the Interstate Commerce Commission in this respect, revised tariffs may be filed with the Board in fifteen days from the date of the Order.

March 16, 1918.

The Assistant Chief Commissioner: I agree in the conclusions arrived at by Mr. McLean.

The Chief Commissioner, the Deputy Chief Commissioner, and Commissioner Goodeve concurred.

Application of the Canadian Consolidated Rubber Company, Limited, Montreal, the Goodyear Tire and Rubber Company of Canada, Limited, Toronto, the Dunlop Tire and Rubber Goods Company, Limited, Toronto, and Gutta Percha and Rubber Limited, Toronto, for a revision of the ratings of rubber and rubber articles as they appear in Canadian Freight Classification No. 16.

File No. 19367.69.

Heard at Toronto, Ont., November 20, 1917.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

At the hearing the parties application covered a great number of points. It was suggested that the applicants and the railway companies should have a conference and see if a number of matters in dispute between them could not be settled amicably. This conference has been held, and I am pleased to say that all matters in dispute, except three, have been settled.

The proposed Supplement No. 11 to the Canadian Freight Classification, recently submitted to the Board for its approval, shows the changes asked for which the railway companies have agreed to. I will, therefore, deal only with the unsettled items.

Boots, Shoes, and Socks.

The Canadian Classification provides 1st class L.C.L., but gives no carload rate. The applicants desire a 3rd class C.L. rating. They already have it to practically all points in Canada by an item in the Eastern and Western Commodity Tariffs rating boots and shoes, leather, rubber, or felt, straight or mixed C.L., minimum 20,000 pounds, 3rd class. The desire of the applicants is to have this C.L. 3rd-class rating put in the Canadian Freight Classification so that they will be able to mix their rubber boots, shoes, and socks with other rubber goods in carload shipments.

The question, therefore, really is, whether the applicants should have this mixing privilege or not. Rubber boots and shoes enter into competition with leather and felt boots and shoes in all parts of the country. At present all manufacturers of boots and shoes, of whatever material, are on equal terms in their competitive markets so far as railway rates are concerned. Under the commodity tariffs referred to they can all ship their products in carload lots, 3rd class. The manufacturers of leather or felt boots and shoes have not the privilege of mixing those products with other leather or felt articles. It might well be said that an undue preference would be given the applicants if their application was granted, and they would thus be enabled to get their rubber boots and shoes into a competitive market with leather boots and shoes at a carload rating, although the carload of rubber goods contained only a small shipment of rubber boots and shoes. This feature of the application with regard to the item under discussion was not developed at the hearing nor have the manufacturers of leather or felt boots and shoes been heard. Therefore, at the present time without further discussion, I think it would not be proper to grant this part of the application, and it should, therefore, be dismissed.

Solid Rubber Tires.

The present classification reads: Tires, carriage or wagon in continuous lengths on reels or spools, burlapped, L.C.L., 1st class. There is no C.L. rating. The request is for a C.L. rating of 3rd class, also for an immaterial change in the terminology. The railway companies objection is that the movement of this class of tire is limited and in L.C.L. quantities. This was not disputed. The applicants desire to be in a position to ship the various products of their factories in mixed carlots at C.L. rates.

Like the last question, this also, is one of mixing, but it has not the objectionable feature that the last question had because these rubber tires do not enter into competition with any other kind of tires to the extent that rubber boots and shoes enter into competition with boots and shoes of other material.

In looking over the list of rubber and rubber articles in the Canadian Freight Classification No. 16, I find that a very wide assortment of rubber goods may now be mixed in carloads. For instance the following articles may be shipped in one car and get a carload rating: Crude rubber, belting and hose, cement in boxes or barrels, packing in boxes or bales, rollers for clothes wringers, scrap, old rubber, shoddy in bags or barrels, substitute vegetable oil fibre in bags or sacks, and tilling boxed. These articles have all got C.L. rating. Nobody can contend that in the case of many of them they move in carload quantities. The C.L. rating can only be given for the purpose of mixing, because of the varied nature of these rubber goods that can be mixed, and I do not think it fair that solid rubber tires should be excluded from the list. I am therefore of the opinion that the applicants request as to this item should be granted.

Pneumatic Tires.

Present Ratings—	Desired.
Bales or bundles, burlapped, D-1	Same, 1½
Boxes or crates, 1½	" 1
Packages named, c.l. min. 16,000 pounds 2	Same, with addition of "loose," 3.

The applicants' request for a change in the general heading to read "Tires, pneumatic, including inner tubes," has been granted by the railway companies in the new supplement.

In connection with the C.L. rating, it is asked that at one pneumatic tire repair kit be included for each set of four tires.

What is desired is practically the official classification of the Eastern States. The western classification is the same as the official in every respect, with the important exception that the C.L. rating is second instead of third on the same 16,000 pounds minimum; in other words, the western C.L. rating is the same as the Canadian, except that the former permits shipment loose, while the Canadian does not.

There are numerous third class C.L. ratings in the Canadian classification, but, with a few exceptions, they carry the regular minimum for that class, which is 20,000 pounds per car. These exceptions are billiard tables and bowling alley outfits for which the minimum is 24,000 pounds; metal cornices and scrap and granulated cork at 12,000 pounds; hops, trunks and valises at 14,000 pounds, and electric light globes and bulbs at 16,000 pounds.

Besides the goods in question, two or three articles are rated 2nd class at lower minima than the minimum of 20,000 pounds for the class; namely, cushions and pillows, and musical instruments at 12,000 pounds, and wool in sacks at 10,000 pounds—the latter with an alternative rating of 20,000 pounds at 5th class.

Whatever may have been the origin of these particular ratings, none of these things compete with tires.

Tires had no C.L. rating until the issue of supplement 4 to the present classification in January, 1915, establishing the existing rating.

Much statistical information, more or less pertinent, has been furnished by applicants. It is well known, however, that the automobile industry has grown enormously and probably without a parallel in recent years, and it is generally acknowledged to be a profitable one. I do not suppose that the freight classification has had anything to do with this development one way or the other.

Whatever may be the condition of the trade, however, classification principles cannot be ignored, and so regarded the L.C.L. ratings are, in my judgment, unduly high.

Comparison with other articles without exceptional bulk would indicate 1st class for tires in cases. Dry goods and boots and shoes, for example, are 1st class in cases,

and while these may be of less value, bulk for bulk or weight for weight, they may easily run considerably higher than rubber tires.

The companies themselves have accepted the crate as an equal protection.

Rule 14 (m) provides that unless otherwise specified, bales and bundles of any goods take a rating of one class higher than the same goods in crates. Applying this principle, the burlapped bales and bundles would be one and one-half 1st class instead of double first, and it may be here noted that dry goods in bales are given the same ratings as in cases.

These changes, which I think should be made, would make the L.C.L. ratings for these types of packing the same as those of the Official and Western Classification, and in my opinion conditions in Canada and the States are not so dissimilar as to negative this arrangement.

I would also adopt the Western Classification for carloads. The only change that this would entail in the Canadian Classification would be to permit the tires to be shipped loose; but I would add, "Must be loaded and unloaded by owners when shipped loose."

Applicants desire the "official" ratings of 3rd class, but I consider that classification anomalous to the extent that with a minimum of 24,000 pounds for solid tires and 16,000 pounds for the pneumatic it makes both 3rd class. The consent rating in the new supplement provides 3rd class for the solid type, so that conformity with the "Western" would be complete. In my judgment, applicants have not shown sufficient cause for the reduction to 3rd class.

The proposal that repair tools be included in C.L. shipments of tires without extra charge seems to me to partake of the character of a special concession, and I know of no reason why this particular industry should be so privileged.

The changes I have suggested should be added to Supplement No. 11 to Classification No. 16, which is now before the Board for approval.

OTTAWA, March 20, 1918.

Commissioners McLean, Goodeve and Boyce concurred.

Complaint of R. W. Hannah, Toronto, Ont., that the Grand Trunk Railway Company refuses to apply its special mileage tariff rates on potatoes between its stations on shippers' circuitous routing.

File 463.10.

JUDGMENT.

MR. COMMISSIONER McLEAN:

Under G.T.R. tariff C.R.C. No. E-3642, rates are quoted on potatoes and flax seed. The tariff provides that the rates as given apply "In straight carloads only. Mileage basis to be used where specific rates in force." Manifestly there is a clerical error and this should read "where specific rates are not in force."

The tariff sets out rates for mileages up to 500 miles.

The tariff is limited in scope to movements between Grand Trunk stations; and it is provided that between common points the competing railways mileage will apply if shorter than distance by the Grand Trunk.

It is contended in substance by the railway that the tariff while quoted, in miles, is in effect a station to station tariff always based on the shortest mileage. It is contended by the applicant that he has a right to a rate on the actual distance moved, regardless of whether it is the shortest distance between the two points concerned.

What is here concerned is a carlot shipment of potatoes moving from Hawkstone, near Orillia, to Montreal.

The shipments in question moved via Toronto and took advantage of the stop-off privilege on potatoes as set out in Grand Trunk Tariff C.R.C. No. E-2374, said tariff

providing *inter alia* that potatoes in carloads may be stopped off at Montreal and Toronto for inspection, change of destination, or for orders, subject to the regulation that if reshipped without breaking bulk, through rate from original shipping point to destination will be applied, plus a "stop-off" charge of one cent per 100 pounds on the billed weight.

The shipments involved moved via Toronto and thence to Montreal, a mileage of 412 miles; and it is claimed by the applicant that the mileage tariff is an open one and that, therefore, the rate properly applicable is the rate for 412 miles, viz., 22 cents plus 1 cent for stop-off, or a total of 23 cents.

On the shipment as made via Toronto, applicant claims the mileage rate plus the stop-off charge. To obtain advantage of the stop-off arrangement, he must comply with the provisions of Tariff C.R.C. E-2374, which in Note C on p. 6 sets out:—

"If the stop-off point is not on the direct run, from original shipping-point to destination, an additional charge of one cent per ton per mile (minimum twenty cents) will be made for the extra distance involved."

The direct mileage Hawkstone to Montreal is 357 miles. This has a through rate of 20½ cents. For the out of line haul of 55 miles, there is a charge of 2¾ cents, while for the "stop-off" there is a charge of 1 cent. The combination thus applying is 24¼ cents instead of the 23 cents which applicant claims.

March 27, 1918.

The Assistant Chief Commissioner and Commissioner Goodeve concurred.

Application made by the London & Port Stanley Railway Company for authority to increase its Standard Passenger Tariff from 2½ cents per mile to 3 cents per mile, and its Standard Freight Mileage Tariff by 15 per cent.

File No. 28439-2.

JUDGMENT.

THE CHIEF COMMISSIONER:

The application in this case really involves the extension of the advances allowed, by the Board on the application of the railways operated by steam for a general advance in rates to the electric lines.

No electric railway was party to that application, and the judgment of the Board did not deal with rates on electric lines as such. And this for very good reason—not only was no application made for an increase, but one of the greatest items of increased cost, namely, the item of coal is, entirely lacking in electric railways operated with hydraulic power. The present applicant operates with hydro power.

Some of the electric railway companies have, since the recent advance was allowed the steam lines, filed tariffs making similar advances in their rates. These tariffs have been disallowed by the Board until the necessities of the electric lines were established.

The London & Port Stanley Railway Company has since filed its application, and has submitted data reflecting its increased costs and the effect that the increased cost schedule has had upon its operations.

No other electric railway line in eastern territory has as yet submitted to the Board evidence on which an increase of rates could be justified.

While the London and Port Stanley Railway does not apply on behalf of itself and all other electric railway companies, that company, operating as it does in a densely populated part of the province, and being without unprofitable mileage confining its operations between terminals already developed, could well be taken as an electric line which should show in the highest degree, having regard to the character of its equipment, the economies of electric railway operation.

The manager and treasurer of the company, which is operated for the city of London by a commission, has filed statements showing the increase in the rate of wages of conductors, motormen, and trainmen, as between July 1, 1915, and January 1, 1918, amounting to an average increase of 32.421 per cent. Increases approximating a similar percentage advance are shown to be typical and applicable to most of the employees.

Comparative prices of supplies as filed by the London and Port Stanley Railway Company show a state of affairs practically the same as the exhibits filed by the steam railway companies in their case, the percentage increase being very heavy, in some instances, take for example rails, running as high as 166.363 per cent.

The Commission, however, does show that it has in the past earned its fixed charges on the old rates, but it is insisted by it that the city is entitled to a greater return than one-quarter of 1 per cent dividend on the monies invested in the electrification scheme.

On the face of it, as it occurs to me, the monies that are invested in the electrification scheme are already earning interest at the rate of $5\frac{1}{2}$ per cent, that interest being charged on the bonds issued for the change to electricity.

It is, of course, true that the city, as city, nets nothing out of the $5\frac{1}{2}$ per cent thus paid, and that as far as its revenue is concerned, in view of the liabilities it has assumed the point taken by the treasurer, Mr. Richards, may perhaps be well taken.

The cost of the change, however, from steam to electrification cannot well be looked upon as the whole cost of the road. The Commission's statement submitted in support of this phase of the application reads:—

“The cost of the road previous to electrification is placed by the city at \$1,169,118.52 on December 31, 1914 (city year-book, 1918, page 112), and the rental received by the city is the return they receive on this old investment. The agreement between the city and our Commission fixed this rental at.—

“\$20,000.00	for the first 10 years.
“\$25,000.00	“ next 20 “
“\$30,000.00	“ “ 20 “
“\$40,000.00	“ “ 20 “
“\$50,000.00	“ “ 20 “

The rental reserved for the first ten years gives a return of less than 2 per cent on the original cost. In considering what a fair return on the line's operations would be, it would certainly not be unfair to the public to place the amount of capital on which the Commission operating for the city ought to earn a return at \$1,759,507. I arrive at this amount by accepting the cost returned by the Commission of electrification, and which amounts to \$1,174,948, and by cutting the cost of the road to the city previous to electrification in two, although I have no doubt that as a matter of fact the cost returned by the city is perfectly correct. Making, however, this large and arbitrary reduction in capital account, there is still no doubt but that on the evidence submitted by the applicants they are entitled to the same measure of relief the steam roads have obtained.

In order to properly carry an investment of this amount, the railway ought to earn approximately \$130,000, over and above operating expenses and taxes. Not only have rents and capital charges to be carried, but the plant has to be, in part, from time to time renewed, and the increased demands of traffic met. This ought to be done without the undue inflation of capital charges by the exclusive use of new capital.

It is true that so far as the passenger equipment of the road is concerned and its electrification the standard is high, but it is also true that the company is able to carry on by reason of its peculiar position a relatively large freight business, having regard to its total operations, with the use of but four freight cars. It is obvious that such a condition as this may at any time change and the company be compelled to acquire more freight equipment.

The company's whole earnings for the year ending December, 1916, are returned as \$316,886.68 (these figures do not include any revenue from Stanley Park, that being a matter entirely unconnected with either the direct revenue or the expenses of the railway function). The company's total operating expenses for the same period amounted to \$186,554, leaving a balance available for capital account and replacement fund of \$130,332. The taxes paid by the company for the year amounted to \$6,647, leaving the company with \$123,685.

As a result, it is perfectly clear that the rates charged by the London and Port Stanley Railway Company in 1916 were not excessive. The year's operations left the road, under the basis that I think to be fair, merely in a proper position.

The rates, of course, in 1917 were the same as they were in 1916; but, in 1917, as a result of the increased expenses, the net result was materially decreased. In 1917, the gross receipts amounted to \$318,034, an amount slightly in excess of the gross of 1916. The expenses, however, increased from \$186,554 to \$220,227, leaving a net balance of \$97,807 to cover capital charges and taxes as against \$130,332 for the previous year.

The net result of the year's operations, had the company continued to pay the different municipalities in which it operates taxes, and assuming that the rate of taxation and amount of assessment had not been increased, would have resulted in a balance available for capital charges and replacement fund of \$91,160 as against \$123,685 for 1916, involving a loss from the previous year's operation of \$32,525. The London commission states that as a public utility it does not now pay taxes.

The commission's figures dealing with capital charges and surpluses call for an annual capital charge made up of 5.5 per cent for interest on the cost of electrification, 1.8 per cent for sinking fund, and the \$20,000 rental payable to the city for the first ten years.

While the basis of a changeable rent or any rent as such is not a basis which can be adopted for the purpose of rate computation, the Commission's figures quite closely approximate the above results.

These figures show a reduction in the company's surplus, which is obtained after deducting capital charges (5.5 per cent interest, 1.8 per cent sinking fund, and rent) and operating costs in the following manner, the figures being given for half-year periods, so as to aid in making comparisons:—

The surplus for January—June, 1916, is reported as.....	\$18,934
The surplus for July—December, 1916, is reported as.....	28,497
Making a total surplus for 1916 of.....	<u>\$47,431</u>
For January—June, 1917, a deficit is reported of.....	\$ 4,450
For July—December, 1917, a surplus is reported of.....	20,865
Making a net surplus for 1917 of.....	<u>\$16,415</u>

As a result, as computed by the London commission, the company's net fell off \$31,016, or a reduction of 66 per cent.

The surplus of 1917 was arrived at without the deduction of any taxes. These taxes should be deducted, in order to arrive at a proper comparison of the earnings of the two years.

Amounting, as the taxes did for the year previous to \$6,647, had taxes been paid, the surplus in 1917 would have been but \$9,768, resulting in a reduction in surplus of \$37,663, or over 75 per cent.

The London commission also advises that its operations, including fixed charges, resulted in a deficit for January last of \$6,941, and for February last of \$6,066, making a total deficit for the two months of \$13,007.

The statements filed in support of the application show that the months of March, April, May, and June, 1917, gave a surplus of \$3,469, while a total deficit of \$4,450 was returned for the six-month period. As a result the deficit for January and February,

1917, amounted to \$7,919. The increased cost schedule is again indicated in the fact that for the two poor months of this year the deficit of \$7,919 for 1917 is increased by \$5,088 in 1918.

Accepting as I do the submissions made by the Commission it is clear that the company's rates are insufficient to properly cover the costs of operation under the conditions of to-day.

Although the commission is not under the heavy burden of increased coal costs but enjoys the full benefit of electrification, the results of operation under to-day's conditions are such that relief must be afforded them, and they require relief to the full extent that relief has been accorded the steam roads.

The commission, however, in some instances apply for greater advances than those allowed the steam roads.

In passenger rates, the application asks for an increase in the Standard Passenger Tariff from $2\frac{1}{2}$ to 3 cents a mile. The steam roads have been allowed to increase their passenger rates by 15 per cent, while the commission's request is for 20 per cent.

Rightly or wrongly it has always been considered that the carriage of passengers on electric railways, just so soon as a proper density of traffic can be maintained, is much cheaper than on steam roads. The London & Port Stanley enjoy large gross earnings greater per mile than those of any similar railway in Ontario.

While the standard passenger tariffs in eastern territory were before the recent advance 3 cents per mile, as a rule the electric rate was lower.

Besides the London & Port Stanley, the Montreal & Southern Counties, the Montreal Park & Island, the Montreal Terminal, the London & Lake Erie, the Brantford Municipal, and the Chatham, Wallaceburg & Lake Erie Railways may be instanced as companies operating under standard passenger tariffs of $2\frac{1}{2}$ cents. The Hamilton Radial operates under a standard tariff of but 2 cents a mile.

It may also be noted that, if the applicants were now operating under the Ontario statute, their rates under that Act instead of being increased would have to be reduced from $2\frac{1}{2}$ cents to 2 cents a mile.

Under the circumstances and in the absence of any special hearings I would maintain the present spread between the standard passenger tariffs on steam and electric roads and only allow an increase of 15 per cent in the companies' tariffs.

The Commission also asks for a special increase of coal rates. The application on this point reads:—

"We hereby make application for permission to increase the rates on coal, bituminous and cannel, from Port Stanley to all points on the London and Port Stanley Railway (London, Somerset, Westminster, Glanworth, Yarmouth, Whites, and St. Thomas) from (50) fifty cents per net ton to (75) seventy-five cents per net ton.

"Our reasons for making this request are the same as those given in our application for permission to increase our standard passenger and freight tariffs—file 28439.2. Without repeating same we wish to have this application supported by the statements attached to the above file.

"The 75 cent rates is slightly under the rate that would have been effective to these points had previous rates and increases allowed to steam roads been maintained. That is, the old rate of 58 cents plus September, 1916, increase of 15 per cent plus March, 1918, increase of 15 cents equals 79 cents.

"The tonnage affected on the basis of 1917 business is 8,773 tons to St.

Thomas and 11,995 tons to London."

The Board allowed a flat increase of 15 cents a ton in the coal tariffs of the steam roads.

The claim made by the Commission as to the rate charged for the carriage of coal before the electrification of the London and Port Stanley is correct; but the general basis of coal rates was changed by the Board in the Eastern Rates Case of 1916.

In so far as the operation of the London and Port Stanley by the Pere Marquette is concerned, the tariffs of that railway provided for the payment of 58 cents a ton from Port Stanley both to London and St. Thomas.

After the electrification of the road, the Commission made a large cut in the coal rate from Port Stanley to St. Thomas, taking 23 cents off the rate. It also made a cut in the rate to London, reducing it by 8 cents. As a result, coal was then carried to St. Thomas for 35 cents and to London for 50 cents a ton.

The question which the Board had before it in 1916 was, of course, the rates charged on coal by the large systems which carried the very great bulk of the traffic.

The rates were regrouped, and coal ex Black Rock consigned to points west of group 1 (which consisted of points on the Niagara river) carried a blanket rate of 44 cents a ton. The longest haul under this blanket is 20 miles.

The mileage from Port Stanley to St. Thomas is 11 miles, and the reduced rate of 35 cents put in by the Commission for that haul would fall within the distance covered by the 44-cent blanket rate.

The next group, ex Black Rock, covers movements up to 50 miles, and these rates were fixed by the Board at 55 cents a ton. Both these rates included the 10 per cent increase which the Board allowed.

As a result, on distances up to 20 miles and past the Niagara river, steam roads now obtain on their coal haul from Black Rock, adding the 15 cents a ton recently allowed, a return of 59 cents a ton; and for hauls up to 50 miles in length, 70 cents a ton.

The judgment in the Eastern Rates Case was issued in June, 1916, and on the first of the following August, the Commission raised the rate to St. Thomas to 50 cents a ton, or 6 cents over the Black Rock 20-mile blanket rate.

As a result of the adjustment made by the London Commission, after the judgment in the Eastern Rates Case, a rate was left which certainly could not be described as unduly low, having regard to the rates fixed by the Board in the Eastern Rates Case on the movement of coal from Black Rock.

Similarly, the rate on coal from Black Rock to London was fixed in the Eastern Rates Case at 99 cents a ton for a haul of 127 miles.

The rate on coal allowed by the Board from Detroit to London under the same judgment was 72 cents a ton, the haul here being 112 miles, resulting in a charge of .643 cents per ton mile.

The longer the haul, of course, the lower the per ton per mile ought to be. Bearing this qualification in mind, the Commission's rate to St. Thomas secures a gross of 4.54 cents per ton per mile, and to London 1.23 cents per ton per mile.

The coal increases asked by the London commission amount to 50 per cent increase on the present rates. If the London commission is held down to the increase allowed to steam lines of 15 cents a net ton, that increase would amount to 30 per cent on the short hauls that are here involved; and, in view of the London commission's short mileage, this percentage increase is not weighted down by long hauls involving rates of \$1 and upwards, as in the case of the large systems.

It is inevitable that a flat increase benefits the company with the short mileage, such as the London and Port Stanley, much more than the larger systems, while conversely percentage increases produce greater results to the large systems with long hauls.

Taking everything into consideration, I am of the opinion that the London and Port Stanley Railway Company is entitled to a flat increase of 15 cents a ton. An increase in rate of 25 cents would create rates entirely out of line with other rates. A 75-cent rate for the 11-mile haul to St. Thomas, or for the 29-mile haul to London, would certainly be excessive as compared with the Grand Trunk rate, as increased, of 87 cents for the 112-mile haul from Detroit to London, after making every allowance for the fact that the movement to London on the Grand Trunk is one of the longest hauls under a blanket rate.

It is usual to hold hearings before taking any action on an application such as this. In the present instance, however, I am convinced that none need be held.

The absolute necessity of greater railway earnings, although seriously challenged at the time the Board took action in the case of the steam roads, is now practically generally admitted. The whole question was most exhaustively argued and considered in the main case.

Increased costs are common, of course, in the United States as well as in Canada. While having no bearing on the propriety of the Board's action, in the main case in the appeal from the Board's judgment to the Governor in Council, allegations were made that the Interstate Commerce Commission had taken no such action on similar applications which had been made by American carriers prior to the application to this Board. It may be noted that similar increases have since been allowed in American territory.

Many of the cost factors now alleged by the applicants have been already passed upon in the former case. As a matter of fact the only matter of advanced costs not on common ground is the question of coal and the fact that the applicants, by the use of hydraulic electricity, have escaped the added cost of coal.

The figures and statements of the London & Port Stanley Railway Company, however, make absolutely clear their necessity for more revenue, assuming always that the railway is to be treated as a commercial venture and to be maintained without loss to the London rate-payer, either in connection with its operations, or what in the long run is much worse, depletion of the property assets owing to undue economies and scamped maintenance.

On the case they have made out, as I see it, the London commissioners would have been derelict in their duty as trustees had the application not been made.

The increases awarded are but temporary, they only apply while the present abnormal and excessive costs prevail. I would, therefore, act upon the application without the delays that are incident to hearings.

Similar relief will be extended to any other electric line that satisfies the Board that its operation and financial condition are such as to require relief.

OTTAWA, March 28, 1918.

Mr. Commissioner McLean concurred.

ORDER No. 27104.

In the matter of the application of the London and Port Stanley Railway Company, hereinafter called the "applicant company," for permission to increase its Standard Passenger Tariff from 2½ cents per mile to 3 cents per mile, and its Standard Freight Mileage Tariff by 15 per cent; and its rate on bituminous and cannel coal from Port Stanley to all points on its railway, from 50 cents per net ton to 75 cents per net ton.

File No. 28439.2.

TUESDAY, the 2nd day of April, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application,—
It is ordered:

1. That the applicant company be, and it is hereby, authorized to increase its Standard Freight Mileage Tariff by 15 per cent (15%), and its Standard Passenger Tariff basis from 2½ cents to 2¾ cents per mile.

2. That the applicant company be, and it is hereby, authorized to increase its rates on bituminous and cannel coal by 15 cents a ton; the increases herein authorized to become effective on the 15th day of April, 1918.

H. L. DRAYTON,
Chief Commissioner.

Application made by the Municipal Council of the City of Victoria and of the Attorney General of the Province of British Columbia for a declaration from the Board as to the rights of the City to access over the Esquimalt and Nanaimo Railway Bridge across a portion of the Victoria Harbour; and the application of the Esquimalt and Nanaimo Railway Company for approval of plan showing proposed replacement of Victoria Swing Bridge, Victoria Harbour, B.C.

File No. 11118.

JUDGMENT.

THE CHIEF COMMISSIONER:

This application which has been before the Board was heard at a sittings of the Board held in Victoria on Tuesday, the 5th day of June, 1917. The case was not then concluded, but counsel were given the liberty of filing further submissions, having regard to the liability of the railway company as alleged by the city on the one hand, and the jurisdiction of the Board to consider the complaint on the other.

In addition to this, the matter seeming to be one eminently for adjustment between the parties rather than a matter which could be dealt with at the time under an Order of the Board, directions were given that the parties should confer and endeavour to come to a compromise. The question of the liability of the railway company in respect of the bridge—the subject matter of the complaint—has been brought before the Board on other occasions.

Negotiations have taken place, but, the parties having failed to arrive at any adjustment, the city is desirous that the matter should be dealt with by the Board without further delay.

Not only is the application an unusual one, but is attended by very unusual circumstances. The tracks of the Esquimalt and Nanaimo Railway Company enter the city of Victoria by means of a swing bridge constructed from the then Indian reserve across a portion of the Victoria harbour to the property of the railway company in the city and constituting the company's terminals.

The bridge was built by the railway company under the authority of an Order in Council approved August 26, 1887, reading as follows:—

“The committee of Council have had under consideration an application of Mr. R. Dunsmuir, on behalf of the Esquimalt and Nanaimo Railway Company, for the approval of the plan and description of a certain swing bridge proposed to be constructed across a portion of Victoria Harbour, B.C., on the line of the said railway, to accommodate both railway and highway traffic.”

“The Minister of Public Works, to whom the said application was referred, reports:—

“That the bridge will to a certain extent hinder the free use of the upper portion of the harbour, which, however, is not of such importance as the lower portion;

“That it appears, by a resolution passed by the municipal council of Victoria, that there is not any objection on the part of the civic authorities to the construction of the bridge, on the proposed site;

"That the harbour of Victoria is, owing to a want of depth, only available for vessels of comparatively small size and draught;

"That the site selected by the company for the bridge leaves the best portion of the harbour free and accessible at all times for such vessels and craft as can enter;

"That the bridge will not obstruct in any way the use of that portion of the harbour; and

"That he sees no objection to its being built inasmuch as a proper draw has been provided for."

"The Minister of Public Works therefore recommends that permission be granted to the Esquimalt and Nanaimo Railway Company to build a railway and highway bridge across a portion of Victoria Harbour, B.C., as per plan hereto annexed."

"The Committee concur in the foregoing report of the Minister of Public Works and submit the foregoing recommendations for Your Excellency's approval."

The plan annexed to the Order in Council and approved thereby allowed the construction of a bridge similar to the bridge which has in fact been erected. In its caption it is headed:—

Esquimalt and Nanaimo Railway

B.C.

"Plan of Proposed Swing Bridge across Victoria Harbour."

The bridge section shows, in the first instance an 18-foot space in which is shown a single track line of railway and extensions 4 feet in width on either side.

The city in the present application, contends that the railway company became bound to construct a railway foot, and vehicular bridge, which were to be free to the public forever and to bring the terminus of the railway within the limits of the municipality.

The city claims, in the first instance, that the company is so bound by agreement; and, in the second instance, that it is bound by estoppel.

No agreement whatever was produced, but the city has put in evidence the following resolution of the city council passed at its meeting held on June 29, 1887:—

"Whereas this council has heard with pleasure the report of his worship the mayor to the effect that Mr. Dunsmuir, president of the Esquimalt and Nanaimo Railway Company, has announced that it is the intention of his company to construct across the harbour of Victoria a railway, foot and vehicular bridge which shall be free to the public forever and to bring the terminus of the said railway within the limits of this municipality."

"Be it therefore resolved, that the thanks of this council be tendered the railway company, through Mr. Dunsmuir, for their liberality and that we are of the opinion that the extension of the line to Victoria will confer a great boon on the citizens thereof."

"Resolved that a copy of this preamble and resolution be transmitted to the Dominion and provincial Governments and the president of the Esquimalt and Nanaimo Railway."

"Seconded by Councillor Pearce and carried."

And copy of letter sent to the Hon. Robert Dunsmuir, July 6, 1887, by the proper civic officials, reading as follows:—

"I am directed by his worship the mayor, to enclose for your information, copy of a resolution passed at a regular meeting of the municipal council of this city on the 29th ultimo." (The resolution is then set out.)

Similar letters were at the same time sent to the Honourable the Minister of Public Works, at Ottawa, and to the provincial secretary, at Victoria.

The above resolution is doubtless the resolution which is referred to in the Order in Council as above set out.

I deal first with the facts relating to the use of the bridge by foot passengers.

The city contends that since the bridge was first opened for traffic, March 29, 1888, it has been constantly used by the pedestrians as of right and without any objection being taken by the company. This the company denies, and evidence was given by it that "trespass" signs had been erected and maintained; that the public had no right whatever to utilize the bridge for pedestrian traffic; and that such use was entirely at the railway's sufferance.

There is no doubt whatever as to the fact that the bridge was used by pedestrians down to the year 1909, when a barrier was erected by the company.

An application at that time was made by the city for a declaratory order that the public had the right to use the bridge as a foot-bridge; and, by adjustment between the parties reached after a hearing before the Board, the public has since used the bridge for pedestrian traffic.

The Order in Council authorized the construction of a bridge to accommodate both railway and highway traffic; and at the hearing held in 1909, Mr. Joseph Hunter, the company's chief engineer, who not only prepared the plan but built the bridge in question, was called as a witness. His evidence on this point reads:—

"Mr. HUNTER: Yes, there was a notice at each side of the bridge stating that at certain hours the bridge would be available for traffic.

"Q. What do you mean by the word 'traffic'?—A. Pedestrian traffic.

"Mr. McMULLEN (for the company):

"Q. That is along the passageways on the sides?—A. Yes.

"Q. These notices are up there yet?—A. I do not know, but I think so.

"Mr. TAYLOR (for the city):

"Q. What were these hours?—A. I think the bridge was available up to ten o'clock at night, from seven in the morning. Then I guess it was open for the vessels to get through.

"THE ASSISTANT CHIEF COMMISSIONER: It was left open at night?—A. Yes.

"Mr. COMMISSIONER McLEAN: Was there any declaration to the effect that the pedestrian traffic was only on sufferance?—A. No, not any more than this notice I spoke of."

The draw of the bridge was left open at night for the purposes of navigation; and, as a result, instead of the company maintaining "trespass" notices against pedestrians, the company recognized the use of the bridge by pedestrians the whole of the period during which the bridge could be so used. As already pointed out, the bridge was built to accommodate such a user.

It is contended, not only by the city but by the attorney general, that the public not only have the right to use the bridge for pedestrians but also for vehicles.

While the resolution of thanks of the city council tendered to Mr. Dunsmuir refers to the bridge as "a foot and vehicular bridge" and not merely to a foot-bridge, and, while the Order in Council describes the bridge as one "to accommodate both railway and highway traffic" and permission is under such terms given, the plan itself makes no provisions whatever for vehicular traffic, unless that part of the floor of the bridge over which trains operated was to be used in common by trains and vehicles. In addition to the passage of trains the company's shunting in part necessitates the use of the bridge. The joint use would be dangerous and entirely against the interests of public safety.

Mr. Taylor, who appeared for the city on the original application, in this connection said:—

"The original construction was designed for a vehicular and passenger bridge, but owing to discussion between the railway company and the city as to

who should bear the extra cost of making it a vehicular as well as a foot passenger bridge, the matter was dropped.

"The railway company wished the city to bear the expense and the city was unable to do so at the time, and it was compromised in the way of a foot bridge at the side."

On the later application, one witness called by the city gave evidence to the effect that the bridge was used from time to time by vehicular traffic, but the weight of the evidence of witness called by the city itself establishes the contrary—the bridge in the evidence was not used for vehicular traffic, with the exception of the period during which the Point Ellis bridge, which required repairs, was closed, the record on this question reading:—

"Mr. HANNINGTON (for city): There is a letter from Mr. Dunsmuir to the Mayor, June 22, 1896:—

"DEAR SIR,—Referring to our interview of last week touching the matter of allowing the public the use of the swing bridge, I have to say that this company has no objection providing the city will lay the necessary planking."

"Mr. McMULLEN: Then there is another letter of September 3. You have that.

"Mr. HANNINGTON: Yes. From the company to the mayor,—

"I am directed by the president to inform you that the E. and N. Railway swing bridge will not be available to the public for the purpose of general traffic after the 3rd proximo. That is signed by you, Mr. Hunter."

"The CHIEF COMMISSIONER: What stand did the city take then in answer to that letter?

"Mr. McMULLEN: That was written after the Point Ellis bridge had been repaired, was it?—A. I think so.

"The CHIEF COMMISSIONER: Did you get any objection from the city's standpoint?—A. Not that I recollect."

On the questions of fact, I find that from the time the bridge was first opened until the company erected its barrier in 1909 the bridge was used by foot passengers without let or hindrance. I further find that the bridge was not used for vehicular purposes, except for a temporary interval on the application of the city and with the express consent of the railway company, which was subsequently withdrawn.

Reference may be had to the evidence of David William Higgins, called by the city, who expressly stated that the bridge was never used for vehicular traffic. Mr. Higgins had direct knowledge of the matter, and was one of the deputation that waited on Mr. Dunsmuir in 1887. He was asked why the deputation went to Mr. Dunsmuir, and his answer was:—

"Because the feeling of the council was that it would be a very good thing to have the railway permanently in Victoria, instead of at the other side of the bridge, which was an expense to people to bring their goods around to the city."

"Q. Your object in going to Mr. Dunsmuir was to induce the railway company to establish terminals in Victoria instead of at the Indian reserve as they contemplated?—A. Yes."

Reference has already been made to the witness, Hunter, the company's engineer. According to his evidence it appears that the company was desirous of constructing its terminals on the Indian reserve; that the company had been unable to obtain property on the reserve for that purpose; that the project was not abandoned; but that, in the meantime, the bridge in question was built and terminals erected in the city, the bridge, if the land in the reserve was obtained and the terminals moved to

the reserve, being so constructed that it could in that case be used for vehicular purposes and afford a direct approach to the terminals. As to the design of the bridge he says:—

“The bridge was designed by me for general traffic on the supposition that some time we would turn it over to the city and would withdraw to the other side and have our terminals and yards and buildings on the other side altogether. I think I made a plan showing the layout of the yards, but I do not know where it is now.”

“Q. And that contemplated turning over of the bridge to the city never came about?—A. It never came about.”

There was no evidence of any agreement whatever between the parties. On the other hand, I have no doubt at all as to the good faith of the council in passing its resolution, and no doubt whatever but that they thought that both a vehicular and pedestrian bridge would be provided by the railway company.

While the question of the erection of structures in navigable waters largely turns on the question of the necessities of navigation rather than the municipal highways, I have no doubt that the resolution of the city forwarded as it was to the Department of Public Works assisted, and perhaps very materially assisted, the railway company in obtaining the order that was subsequently issued.

It is also argued by the applicants that the railway company, in submitting its application to the Governor in Council, and obtaining and taking the benefit of the Order in Council of August 26, 1887, has estopped itself from denying the existence of the agreement which is alleged; and it is further argued that, while this does not constitute an estoppel of record, it is estoppel *quasi* of record, inasmuch as the company has submitted the question to the decisions of a tribunal having jurisdiction thereover, and cannot repudiate the order which was made on such submission.

In my opinion the Board cannot give effect to this contention. The Order in Council neither constitutes nor evidences an agreement between the parties. In any event the jurisdiction of the Board with reference to agreements is entirely statutory. The provisions of the Act reads:—

“Where it is complained by or on behalf of the Crown or any municipal or other corporation or any other person aggrieved, that any company has violated or committed a breach of an agreement between the complainant and the company—or by any company that any such municipal or other corporation or person has violated or committed a breach of an agreement between the company and such corporation or person—for the provision, construction, reconstruction, alteration, installation, operation, use or maintenance by the company, or by such municipal or other corporation or person, of any structure, appliance, equipment, works, renewals or repairs upon or in connection with the railway of the company, the Board shall hear all matters relating to such alleged violation or breach, and shall make such order as to the Board may seem, having regard to all the circumstances of the case, reasonable and expedient, and in such order may in its discretion direct the company, or such municipal or other corporation or person, to do such things as are necessary for the proper fulfilment of such agreement, or to refrain from doing such acts as constitute a violation or a breach thereof.”

It will be noted that agreements, although made by railway companies, are not placed generally under the Board's jurisdiction, but only agreements relating to the company's obligations having regard to its railways and its operation and use, etc. The ordinary contractual obligations of railways are left with the appropriate courts.

It is argued that the company has not carried out the Order in Council and that the Board may enforce it. The order is made by the Governor in Council on the recommendation of the Minister of Public Works, and having regard to the jurisdiction of the Department of Public Works with reference to navigable waters.

I am of the opinion that jurisdiction cannot successfully be established in the Board on this ground, but that so approaching the matter it is entirely one for the department. Further, if there was jurisdiction, the plan actually approved by the Order in Council is a plan with but 18 feet space for railway occupancy. This is done too much for the railway. There is no space whatever provided for a vehicular highway, and the ever-ruling interest of public safety of itself would entirely negative the possibility of an order allowing vehicles to use in common this piece of the bridge with the railway.

The right of the public to use the bridge for pedestrian purposes stands on a different ground. In the first instance, the bridge was specially designed by the company for the use of pedestrians. It has been so used, and without objection by the company. A false representation in order to effect an estoppel must be a misrepresentation of an existing fact—not the expression of a mere intention. Here the matter does not stand on any declaration of intention, but is carried out by the company; the structure is built and used.

On the evidence I find the company built the extensions on either side of the bridge for the pedestrian use of the public. That the footpaths so provided are in fact public ways and communications.

Such use entails no conflict with the company's statutory duties and is not incompatible with the railway use of the bridge, although the use of the bridge by vehicles doubtless would be.

I should also point out that under the Act the Board has no jurisdiction to order combined highway and railway bridge. No order can here be made, except that the company be ordered to continue to permit the passage of pedestrians over the bridge where sidewalks have been built for that purpose.

This bridge is an old one, and the company is applying for leave to substitute another bridge in its place.

The city have plans prepared for a bridge which will call for the expenditure of a large sum of money.

It is much to be regretted that the parties have not been able to get together.

The company did not proceed with its application for leave to put up a new bridge at the hearing.

The present bridge is getting to a point when it will very soon have to be renewed in the interest of public safety. The Board has the right to authorize repairs and strengthen the present bridge. The company, however, desire to substitute an entirely new bridge for it. Under these circumstances, before any order is made by the Board, the plans of the new structure will have to be submitted to the Department of Public Works, to enable such department to satisfy itself as to the necessities of navigation at the present time. Note sections 233 and 234 of the Act.

OTTAWA, March 30, 1918.

The Assistant Chief Commissioner and Commissioners Goodeve and Boyce concurred.

Mr. COMMISSIONER McLEAN:

The question of the Board's power to enforce an agreement is raised in this application. The general principle applicable to the Board's jurisdiction is that it has only such jurisdiction as the statute gives by its express terms, or by the necessary implication therefrom. *Duthie vs. G.T.R. Co.*, 4 *Can. Ry. Cas.*, 311.

Prior to the amending legislation of 1908, contained in section 8, chap. 61, 7-8 Ed. VII, the Board had no jurisdiction in regard to the enforcement of an agreement. The legislation aforesaid was repealed and replaced by section 1, chap. 32, 8-9 Ed. VII.

In view of the fact that the jurisdiction so conferred was an invasion of a field hitherto occupied by the courts, the exact words of the section are worthy of the most careful consideration.

An analysis and extension (where there is condensation) of the provisions of the section will show what constitute the conditions precedent to a complaint regarding an agreement coming before and being dealt with by the Board, and will also indicate the limits of the jurisdiction conferred. The subject matter of the section may be presented analytically as follows:—

I. Complaint made—

(a) By or on behalf of the Crown or any municipal or other corporation or any other person aggrieved that the company has violated or committed a breach of an agreement between the complainant and the company;

(b) Or by the company that any such corporation or person has violated or committed a breach of an agreement between the company and such corporation or person.

II. Subject-matter of agreement,—

(a) For the provision, construction, reconstruction, alteration, installation, operation, use or maintenance by the *company* (1) of the railway or of any line of railway intended to be operated in connection with or as part of the railway, (2) or of any structure, appliance, equipment, works, renewals or repairs upon or in connection with the railway;

(b) Or for the provision, construction, reconstruction, alteration, installation, operation, use or maintenance by such corporation or person (1) of the railway or of any line of railway intended to be operated in connection with or as part of the railway, (2) or of any structure, appliance, equipment, works, renewals or repairs upon or in connection with the railway.

The Board, when these conditions precedent have been met and after hearing, may issue order either to the company or “such corporation or person” to do such things as are necessary for the proper fulfilment of such agreement, or to refrain from doing such acts as constitute a violation or breach thereof.

It will be noted that the subject-matter of the section contemplates the doing by a party to the agreement of something concerned primarily with the physical construction or reconstruction and maintenance, and that while the agreement in this respect is to be enforceable on complaint of “such corporation or person” against the company (that is the railway), it is also enforceable on complaint of the company against “such corporation or person.”

As the subject-matter is in terms of the section related to the railway or to any line of railway intended to be operated as part of the railway, or to physical works in connection therewith, it appears somewhat difficult to understand how the municipal corporation can be obligated as to the doing of such work. This phase of the matter need not be further pursued.

What is concerned is the actual carrying out by the party, who is alleged to be acting in breach of the agreement, of the physical works and maintenance in connection therewith, as referred to in the statute. In connection with the word “maintenance” occurs the word “use”; but the context makes clear that what is here concerned is the obligation either of the company or “such corporation or person” itself to *use*, and the procedure is in connection with enforcing the *use*, by the party who is in this respect acting in breach of the agreement. It is not concerned with the obligation to permit another to *use*.

As what is asked for in the present application is that the company should be compelled under an agreement to permit the municipality to *use*, it is clear that this does not fall within the scope of the agreement section.

If what is here concerned was the matter of the use for pedestrian purposes of a path or way along the right of way of the railway, it is established that the railway would be without power to alienate for this purpose either gratuitously or for valuable consideration any portion of its right of way which it acquires under its compulsory powers for the purposes of its undertaking.

While in some aspects the bridge may be regarded as a substituted right of way, it would appear that a bridge over navigable water, where the fee of the land underneath the water and over which the bridge passes is in the Crown, is in a different category from that occupied by the right of way of the railway as above referred to.

I agree in the reasons for judgment as rendered.

April 3, 1918.

Application of the Rural Municipality of Buckland, No. 491, per J. S. Pineo, Prince Albert, Sask., for an order directing the Canadian Northern Railway Company to place gates at both ends of the bridge across the North Saskatchewan river at Prince Albert, with an attendant to operate same or warn the public of approaching trains.

Case 3161.

JUDGMENT.

Mr. COMMISSIONER McLEAN:

By the Board's Order No. 5409 of October 16, 1908, upon the application of the Canadian Northern Railway Company for authority to construct a bridge across the North Saskatchewan river, in the province of Saskatchewan, sanction issued granting the authorization asked for.

Under date of August 9, 1917, the Board was written to by the rural municipality of Buckland, Sask., as follows:—

“Whereas the bridge across the North Saskatchewan river at Prince Albert, Sask., is used for both railway and traffic purposes; and

“Whereas there is no adequate method of giving warning when a train is approaching the bridge; and

“Whereas in a number of instances when trains and teams have been on the bridge at the same time serious accidents have very narrowly been averted, only recently Mrs. Morash having a child thrown from the vehicle, barely escaping being thrown into the river;

“Therefore be it resolved: That the council of the rural municipality of Buckland, No. 491, request the Railway Commission to cause the Canadian Northern Railway Company to place gates at both ends of the bridge with an attendant to operate the same or provide signals to warn the public against approaching trains, and that a copy of this resolution be forwarded to the council of the city of Prince Albert for their support.”

The matter was subsequently set down for hearing.

The situation is that under an arrangement with the provincial Government there was provision made by the provincial Government for having attached to said bridge roadways on brackets. The agreement between the railway and the provincial Government was arrived at in letters exchanged by the Government and the company.

The following is submitted to the Board by the railway as being an extract from a letter from the Premier of Saskatchewan, dated July 29, 1907, and addressed to the president of the Canadian Northern Railway Company:—

“With further reference to the proposition contained in your letter of the 25th January last, and to our conversation when you were in Regina a few days ago, I may state that I have gone into the matter again with Mr. Lamont. He holds the view very strongly that, to be satisfactory, the bridge must be complete with the ten-foot roadway on each side clear of the railway track.

“We agree that the limit of assistance which the Government will be justified in extending for such complete bridge is one hundred thousand dollars (\$100,000).

"The conditions we will agree to are:—

"(1) The Government, after the bridge is erected, to bear the cost of maintaining the approaches for vehicle traffic at each end of the bridge; also to bear the cost of maintaining the roadway on the brackets of the bridge.

"(2) The company to bear the cost of maintaining the steel construction in repair.

"(3) The Government to bear half the cost of operating a swing span during each season of navigation.

"(4) The bridge to be built and ready for vehicle traffic on or before 1st November, 1908.

"On a bridge complete as herein suggested, no watchmen will be required."

It will be noted that this is antecedent to the order above referred to. The railway states that these conditions were accepted by it and the bridge was constructed, the roadway, however, being 12 feet wide instead of 10 feet. It is further stated that the time for completing the bridge was extended to March 15, 1909.

At the hearing the following answer was given by Mr. Pineo, who appeared for the applicant municipality:—

"THE ASSISTANT CHIEF COMMISSIONER: I understand the centre part of the bridge is used by the railway and that there is a space for pedestrian and vehicular traffic on each side.

"MR. PINEO: Yes.

"THE ASSISTANT CHIEF COMMISSIONER: And that there is a fence or partition between the railway location and the highway, some lattice work or iron, or something of that kind.

"MR. PINEO: Yes.

"THE ASSISTANT CHIEF COMMISSIONER: About what height?

"MR. PINEO: I would not say. It is high enough anyway. A team could not get against the train so far as that goes.

"THE ASSISTANT CHIEF COMMISSIONER: It is then merely a question of horses being frightened while crossing the bridge?

"MR. PINEO: Yes."

If instead of a highway traffic annex to a railway bridge there was a separate highway traffic bridge located adjacent to but separate from the railway bridge the result might be that horses crossing the highway bridge would be frightened by trains passing on the adjacent railway bridge. But it could not properly be claimed that under such conditions the railway should be responsible for the cost of protective devices in respect of the traffic on the highway bridge. It does not appear that there is a different condition when the highway traffic bridge is made an annex to the railway bridge.

It appears from the evidence that there is nothing which the railway has done which causes the danger. The following discussion took place at the hearing:—

"THE ASSISTANT CHIEF COMMISSIONER: This bridge, as I understand, was constructed partly by the Government for the benefit of the public?

"MR. PINEO: Yes. As I understand the traffic side of the bridge was paid for by the Government and is maintained by the Government.

"THE ASSISTANT CHIEF COMMISSIONER: Therefore, the public are really a party to this method of construction and it is nothing the railway has done which causes the danger?

"MR. PINEO: Yes."

What really is asked for is the installation of some device which will give a warning so that vehicular traffic will not enter upon the highway annex at a time when engines and cars are passing over the railway bridge.

The matter has since the hearing been further carried on by correspondence between the railway and the municipality and also between the railway and the provincial Government. A copy of a letter addressed to the applicant municipality is before the Board, written by Mr. Carpenter, Deputy Minister of the Board of Highway Commissioners of Saskatchewan, which reads as follows:—

“I have had some correspondence with the Canadian Northern Railway Company in connection with the matter of providing protection to persons using the traffic attachment to the C.N.R. bridge at Prince Albert in the way of warning of approaching trains. I have discussed the matter with the engineers of the Canadian Northern Railway Company and they have suggested the installation of two ‘wigwag automatic flagmen.’ This would consist of an arm which would swing back and forth across the end of the bridge on the approach of a train. The arm would be illuminated at night and in addition to this a bell would ring. The automatic flagmen and bell would be set in operation by the train approaching from either end and would be sent in operation when the train reached a point far enough away from the bridge to permit a person travelling on the bridge to clear the bridge before the train reached it. The engineer for the Canadian Northern Railway Company has given me an estimate of the cost of the installation of these two flagmen complete to be \$2,111.

“I am satisfied the installation of the above would serve to give ample warning and prevent accidents which I understand occasionally occur as a result of horses taking fright when on the bridge at the same time as a passing train. The alternative would be the construction of gates, but these in addition to the cost of installation would require the attendance of a watchman or probably two watchmen, one at each end of the bridge. The paying of the salary of these men would, of course, entail a very considerable annual maintenance charge, more probably than conditions would warrant when protection can be obtained by the installation of the automatic flagmen and bell.

“As I advised you on October 13 last no provision has been made in the agreement between the Government and the Canadian Northern Railway Company providing for the sharing of the cost of installing protection here or maintaining the watchmen so that it would appear to be a matter for your municipality and the Canadian Northern Railway Company and possibly the city of Prince Albert to arrive at a settlement as to sharing the cost of installing and cost of maintaining such protective devices as they may decide upon; or in the event of no arrangement between the above parties being arrived at, probably the Board of Railway Commissioners will give an order fixing this.”

From the evidence as submitted, it does not appear that the railway is the cause of the danger. The fence which divides the highway annex to the bridge from the railway portion of the bridge has been admitted in evidence to be safe and satisfactory. The desire to have some device which will warn people so that they will not drive on to the bridge with their vehicles when railway trains are also crossing is a desire to have something which is incidental to the use of the highway bridge.

The department, as indicated in its letter, takes the position that no provision was made in the agreement between the Government and the Canadian Northern Railway Company providing for a share of the cost of such a protective device as is here involved.

Without attempting to enter upon the construction of the obligations of the provincial Government in respect of maintenance of the traffic annex in question, the situation is that the railway company not being responsible for the dangerous situation, no order as against the railway for participation in cost can issue.

April 2, 1918.

The Assistant Chief Commissioner concurred.

Complaint of the Swift Canadian Company, Limited, of Winnipeg, Man., against freight charges and refusal of railway companies to make allowance on box cars used in cases where the said railway company were unable to furnish stock cars at the St. Boniface stock yards for service to the plant of the complainant.

File 27700.

JUDGMENT.

MR. COMMISSIONER McLEAN:

This complaint is concerned entirely with the Canadian Pacific's local movement from the Union Stock Yards at St. Boniface to the Swift Canadian Company's packing-house on the east side of the Red river in the district known as Elmwood.

Supplement 1, effective May 21, 1917, to C.P.R. Switching Tariff C.R.C. No. W. 2251, of April 17, 1917 (both in effect when the hearing was held, although Mr. Ingram's quotations were from the previous tariff), shows a rate of 1 cent per 100 pounds, minimum \$5 per car, on livestock from the Union Stock Yards to abattoirs situated on Canadian Pacific Railway tracks and Canadian Pacific Railway stock yards at Winnipeg. It is obvious that what is really meant is a flat \$5 per car rate, since no carload of stock would weigh 50,000 pounds.

If stock cars are not available and box cars are substituted, the railway agent must have some unit of measurement in order to prevent more animals being shipped than could have been loaded in stock cars for the same charge; hence the provision in the Company's Special Tariff of Rules and Regulations, C.R.C. No. W. 2139, quoted by Mr. Ingram, as follows:—

"Whenever through shortage of stock cars for carload shipments of cattle and horses, the Car Service Department finds it necessary to supply box cars in lieu thereof, a sufficient number of box cars may be supplied to furnish carrying capacity equivalent to the number of stock cars ordered, at the minimum weights for stock cars required, actual weight if greater.

In applying above authority, agents will use following scale as maximum carrying capacity of stock car and draw waybill for each stock carload accordingly:—

"Cattle.—Beef cattle, 18 head. Yearlings, 35 head. Two-year olds, 26 head. Mixed cars of cattle of different ages (including cows), 22 head.

"Horses.—Heavy, 17 head; medium, 19 head; light, 22 head.

Box cars in accordance with above will only be supplied on specific authority to the Car Service Department, reference to which will be noted on waybills.

Agents must show clearly on waybills what cars were ordered by shippers and what cars supplied, such as 'One stock car ordered, two box cars supplied.

The arrangement above set out as to equivalent carrying capacity is stated by the railway to have been in operation for some twenty years, under an arrangement with western livestock shippers.

During a period extending from October 26 to November 4, and owing to the inability of the railway to supply livestock cars for the intra-terminal movement concerned, the applicant had to use 71 box cars in the movement of cattle.

The complaint has been developed partly in correspondence and partly by hearing. The record as presented both in presentation and in refutation was not as clear as it might have been. It is not stated what amount is involved, although this may be checked from the estimates of capacity as presented.

The application is, in effect, one for a construction and interpretation of the tariff as to a past transaction, and with a view to the bearing of the application on a dispute as to a freight charge outstanding.

There is in contention, in the first place, the proper ratio between livestock cars and box cars in point of carrying capacity; and, in the second place, the proper estimated loading of livestock cars to be taken as a basis for computation of equivalent capacity.

Applicant contended that it took four box cars to hold the contents of three livestock cars. Apparently there is agreement here. In the course of the hearing, the following discussion took place:—

“Commissioner McLEAN: I see 54 head of cattle were loaded on the average in three stock cars. What would it take in box cars to handle the same load?

“Mr. LANIGAN: I think that would go into three stock cars and would probably necessitate four box cars.

“Commissioner McLEAN: Four to three.

“Mr. INGRAM: That is all we are asking for; that is all our application covers.”

What is fundamental is the second point, viz., the loading of the car. Mr. Lanigan's computation as above set out is based on eighteen head of cattle to the livestock car. Mr. Ingram contends that the starting point of the computation in the local movement concerned should be fifteen head of cattle to the livestock car. He says that more than this cannot properly be loaded in this movement, and refers in this connection to the shrinkage on the short movement concerned.

The arrangement in respect of supplying equivalent box car capacity where live stock cars are not available no longer applies on switching movements. It was abolished by the provisions of Item 85 of C.R.C. No. W. 2250, which was effective before the date of the hearing but was not referred to at the hearing.

The tariff under which application was made was explicit as to the eighteen head basis. Had the Board been of the opinion that 15 head was the proper basis on a switching movement, then this could only have been a direction for amendment of tariff as to the future. The Board could not have made it retroactive. As the tariff no longer permits as to switching movements—what is involved in the complaint—there is nothing on which to rule in connection with the application as launched.

April 3, 1918.

The Chief Commissioner concurred.

ORDER No. 27096.

In the matter of the order of the Board No. 24628, dated January 10, 1916, made upon the application of the Canadian Fisheries Association of Montreal and the W. J. Guest Fish Company of Winnipeg, suspending, pending a hearing by the Board, the tariffs of the Dominion, Canadian, and Canadian Northern Express Companies hereinbelow particularly referred to.

File No. 4214.517.

FRIDAY, the 22nd day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON. W. B. NANTTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, March 21, 1916, the Canadian Fisheries Association, the W. J. Guest Fish Company, Limited,

the Maritime Fish Corporation, the Montreal and Toronto Boards of Trade, and the express companies being represented at the hearing, and what was alleged; and upon the report of the Chief Traffic Officer of the Board,—

It is ordered: That the following tariffs, namely:—

Dominion Express Company.

Supplement 11 to Tariff C.R.C. No. 4418.

Supplement 8 to Tariff C.R.C. No. 4437.

Canadian Express Company.

Tariff, C.R.C. No. 1683.

Tariff, C.R.C. No. 1684.

Tariff, C.R.C. No. 1685.

Tariff, C.R.C. No. 1686.

Supplement No. 1 to Tariff C.R.C. No. 1527.

Supplement No. 2 to Tariff C.R.C. No. 1622.

Canadian Northern Express Company.

Supplement No. 1 to Tariff C.R.C. No. 835.

Be, and they are hereby disallowed.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 224.

In the matter of the General Order of the Board No. 222, dated March 19, 1918, requiring that the tariffs of the Pere Marquette Railroad Company and the Canadian Pacific, Grand Trunk, and Canadian Northern Railway Companies, providing for the transportation of packing house products, fresh meats, and other articles in pedlar cars, be revised so as to include oleomargarine as a packing house product.

File No. 18855.22.1.

WEDNESDAY, the 27th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed on behalf of the Canadian Manufacturers' Association,—

It is ordered: That the said General Order No. 222, dated March 19, 1918, be, and it is hereby, amended by adding the following words thereto, namely: "The said tariffs to become effective April 15, 1918."

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 223,

In the matter of the General Order of the Board No. 204, dated August 11, 1917, authorizing for the observance of the railway companies subject to the jurisdiction of the Board which accept explosives for carriage, the revised regulations for the transportation of explosives, as amended and filed by letter dated December 16, from G. C. Ransom, chairman of the Canadian Freight Association, on file with the Board under file No. 1717, marked "A."

THURSDAY, the 28th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed on behalf of the Canadian Freight Association,—

It is ordered: That paragraph No. 1644, (b) and (c), of the said Regulations for the Transportation of Explosives, as authorized by the said General Order No. 204, dated August 11, 1917, be, and it is hereby, amended to read as follows, namely:—

"1644 (b). Dangerous Explosives for which a certified and placarded car is prescribed (see paragraph 1661), must not be loaded higher than the car lining.

"(c) When the lading of a car consists of or includes explosives, the weight of the lading should be distributed so that it will be equalized on each side of the car and over the trucks."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27098.

In the matter of the complaint of the Board of Trade of Brockville and H. H. Cossitt, of Brockville, in the province of Ontario, against the train service furnished by the Canadian Pacific Railway Company between Brockville and Ottawa.

File No. 27563-57.

THURSDAY, the 28th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the railway company; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, required to rearrange its train service so as to provide for a passenger train to leave Smiths Falls at or about 10.50 a.m., after the arrival of the Ottawa-Toronto train, due to arrive at Smiths Falls at 10.40 a.m., and to arrive at Brockville at or about 12 o'clock noon; return service,—to leave Brockville at 3.45 p.m., and arrive at Smith Falls at or about 4.50 p.m., in time to connect with the Toronto-Ottawa train, due to leave Smiths Falls at 5 o'clock p.m.

And it is further ordered: That the said railway company resume the service of its mixed train No. 561 from Smiths Falls at 9 o'clock a.m., instead of 11 o'clock a.m., in accordance with the arrangement made effective on March 4 instant; all of the said trains to be operated daily, except Sunday, and the said changes to become effective not later than April 8, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27102.

In the matter of the application of the Dominion Atlantic Railway Company, under the provisions of section 11, chapter 61, of the Acts 7-8 Edward VII, for approval of by-law No. 14, authorizing F. G. J. Comeau, general freight agent, and R. U. Parker, general passenger agent, to prepare and issue tariffs of the tolls to be charged for the carriage of freight and passenger tariffs upon the railways owned or operated by the said company, or any portion thereof.

File No. 28570.

SATURDAY, the 30th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That by-law No. 14, authorizing F. G. J. Comeau, general freight agent, and R. U. Parker, general passenger agent, of the Dominion Atlantic Railway Company, to prepare and issue tariffs of the tolls to be charged for the carriage of freight and passenger traffic upon the railways owned or operated by the said company, or any portion thereof, on file with the Board under file No. 28570, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27103.

In the matter of the application of the Algoma Central and Hudson Bay Railway Company, under section 11, chapter 61, of the Acts 7-8 Edward VII, for approval of a by-law passed on the 19th day of March, 1918, authorizing R. S. McCormick, general superintendent and chief engineer of the said company, to prepare and issue tariffs of the telephone tolls to be charged by the company, and to specify the persons to whom, the place where, and the manner in which such tolls shall be paid.

File No. 19414.

SATURDAY, the 30th day of March, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law, authorizing R. S. McCormick, general superintendent and chief engineer of the Algoma Central and Hudson Bay Railway Company, to prepare and issue tariffs of the telephone tolls to be charged by the company, on file with the Board under file No. 19414, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27100.

In the matter of the application of the British Yukon Railway Company, under section 11 of the Acts 7-8 Edward VII, chapter 61, for approval of by-law No. 12, passed March 25, 1918, authorizing W. H. Wheeler, general manager, and A. F. Zipf, traffic manager, to prepare and issue tariffs of the tolls to be charged by the said company, and to specify the persons to whom, the place where, and the manner in which such tolls shall be paid.

File No. 2181.

TUESDAY, the 2nd day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law No. 12, authorizing W. H. Wheeler, general manager, and A. F. Zipf, traffic manager, of the company, to prepare and issue tariffs of the tolls to be charged on the railway, on file with the Board under file No. 2181, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 215-C.

In the matter of the application of the Oshawa Railway Company for approval of its Standard Freight Tariffs of Maximum Mileage Tolls.

File No. 27840.21.

TUESDAY, the 2nd day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

The said Standard Freight Tariff having been filed on the basis permitted by the Board in its General Order No. 213, dated December 26, 1917,—

It is ordered: That the Standard Freight Mileage Tariff of the Oshawa Railway Company, C.R.C. No. 15, dated to become effective April 15, 1918, be, and the same is hereby, approved; the said tariff, with a reference to this order, to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 225.

In the matter of the application of the Canadian Freight Association, on behalf of all railway companies subject to the legislative authority of the Parliament of Canada, under section 340 of the Railway Act, and such other sections as may be applicable thereto, for an Order approving the form of Bill of Lading issued by the Government of the United States of America, for use in respect of all shipments of munitions, war materials, and supplies by or on behalf of the said Government, or any of its contractors; and providing that, notwithstanding the provisions of the General Order of the Board No. 41, dated July 15, 1909, the form herein referred to may be used by all such railway companies in respect of such shipment.

File 3678-40.

WEDNESDAY, the 3rd day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. MCLEAN, *Commissioner.*

Upon reading what is filed in support of the application, and its appearing that the said bill of lading is made subject to the conditions of the bill of lading approved by the General Order No. 41, dated July 15, 1909,—

It is ordered: That the form of bill of lading issued by the Government of the United States of America, for use in respect of all shipments of munitions, war materials, and supplies by or on behalf of the said Government, or any of its contractors, copies of which are on file with the Board under file No. 3678-40, be, and it is hereby, approved, and that, notwithstanding the provisions of the said General Order No. 41, dated the 15th day of July, 1909, the form herein approved may be used by all such railway companies in respect of the said shipments of munitions, war materials, and supplies.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 226.

In the matter of the General Order of the Board No. 199, dated July 24, 1917, requiring every railway company subject to the legislative authority of the Parliament of Canada to equip its locomotives used in road service, between sunset and sunrise, with headlights which will enable persons with normal vision in the cab of a locomotive, under normal weather conditions, to see a dark object the size of a man for a distance of 1000 feet or more ahead of the locomotive, such headlight to be maintained in good condition.

File No. 6511.

THURSDAY, the 4th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*D'ARCY SCOTT, *Assistant Chief Commissioner.*HON. W. B. NANTTEL, *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading the submissions filed, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said General Order No. 199, dated July 24, 1917, be, and it is hereby, amended by striking out the figures "1,000" in the seventh line of paragraph 1 of the Order and substituting therefor the figures "800."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27105.

In the matter of the application of the Lake Erie and Northern Railway Company, on behalf of itself and other railway companies operating by electricity and subject to the jurisdiction of the Board, hereinafter called the "applicant company," for authority to file tariffs providing for a general advance in the tolls for the carriage of passengers and freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways under General Orders Nos. 212 and 213 and the judgment referred to therein.

File No. 28439.4.

THURSDAY, the 4th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That the applicant company be, and it is hereby, authorized to advance its rates for the carriage of freight over its line by 15 per cent; and to advance its passenger rates from two and one-half cents to two and seven-eighth cents per mile; the advances herein authorized not to become effective prior to the 15th day of April, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27112.

In the matter of the complaint of R. W. Hannah, of Toronto, Ont., that the Grand Trunk Railway Company refuses to apply its special mileage tariff rates on potatoes between its stations on shippers' circuitous routing.

File No. 463.10.

THURSDAY, the 4th day of April, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*
S. J. McLEAN, *Commissioner.*
A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, February 15, 1918, the complainant and the railway company being represented at the hearing, the complainant also appearing in person, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27113.

In the matter of the application of the chairman of the Express Traffic Association of Canada, on behalf of the express companies subject to the legislative authority of the Parliament of Canada doing business in the town of Walkerville, in the province of Ontario, for the establishment of collection and delivery limits in the said town; and the Orders of the Board Nos 19534 and 20438, dated respectively, June 9, 1913, and September 24, 1913. made herein.

File No. 4214.189.

FRIDAY, the 5th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed on behalf of the Express Traffic Association of Canada, no reply having been received by the Board to its letters of January 18 and March 4, 1918, to the town of Walkerville, asking whether the proposed express delivery limits at Walkerville were satisfactory to the municipality,—

It is ordered: That, until further order of the Board, the tolls of the said express companies include the collection and delivery of express freight by the said companies, or their agents, in all thoroughfares reasonably passable for express wagons in, and outside of the said town of Walkerville in, and on both sides of, the undermentioned thoroughfares, and in the area continuously enclosed thereby and by the Detroit river:—

Maisonville road from the Detroit river, Edna street, Walker road, tracks of the Essex Terminal Railway Company, Argyle road, Ottawa street, Victoria street to Erie street (produced), to western town boundary, and by the said boundary to the river. Also in St. Luke road from Edna street southward to and including the plant of the Tate Electric Company.

And it is further ordered: That the orders of the Board No. 15399, dated October 24, 1911, No. 19534, dated June 9, 1913, and No. 20438, dated September 24, 1913, made herein, be, and they are hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

March 27, 1918.

CIRCULAR No. 162.

Standardizing of crews for the operation of freight trains on electric railways.

File 28517.

The Board desires to be informed of the practice of electric railways subject to its jurisdiction with regard to the crews of electric freight locomotives, and if in the operation of such motors—whether switching or in road service—the crew consists of two men the same as a steam locomotive, or but one man on the engine.

You are requested to file your submissions in the matter within thirty days of the date of this circular.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.



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The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. VIII

Ottawa, May 1, 1918

No. 3

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In the matter of General Order of the Board No. 205, dated 15th August, 1917, requiring railway companies subject to the jurisdiction of the Board to stencil inches on the inside walls of cars used in the grain traffic in the provinces of Manitoba, Saskatchewan and Alberta, so as to show the depth of grain loaded therein, one stencil on each side of each door and three or four feet therefrom; all such cars hereafter built to be so stenciled before going into service, and those now in service to be so stencilled from time to time when shopped for repairs.

File No. 20070.

RULING.

As pointed out in the judgment of Mr. Commissioner McLean, dated July 31, 1917, foreign cars are not required to be equipped with stencilling. General Order No. 205, issued in pursuance of said judgment, applies in the case of railway companies operating in whole or in part in the provinces referred to in the order; also in the case of a railway company controlling a railway operating in said provinces where the cars of the said controlling railway are used in the grain traffic.

Dated at Ottawa, November 10, 1917.

ORDER No. 27116.

In the matter of the application of the Western Canada Telephone Company, hereinafter called the "applicant company," under section 11 of the Acts 7-8 Edward VII, chapter 61, for the approval of a by-law, passed March 30, 1918, authorizing William Farrell, president, and Ernest F. Helliwell, secretary, to prepare and issue tariffs of the tolls to be charged, both local and long distance, and to specify the persons to whom, the place where, and the manner in which such tolls shall be paid.

File No. 28603.

TUESDAY, the 9th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-law be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.



ORDER No. 27117.

In the matter of the application of the London and Port Stanley Railway Company, hereinafter called the "applicant company," under sections 327 and 331 of the Railway Act, for approval of its Standard Freight Tariff of Maximum Mileage Tolls, C.R.C. No. 176, and its Standard Passenger Tariff naming maximum fare per mile, C.R.C. No. 115.

File No. 25649.5.

TUESDAY, the 9th day of April, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

The said standard freight and passenger tariffs having been filed on the basis permitted by the Board in its Order No. 21704, dated April 2, 1918,—

It is ordered: That the applicant company's said Standard Freight Tariff of Maximum Mileage Tolls, C.R.C. No. 176, and the said Standard Passenger Tariff, C.R.C. No. 115, dated to become effective April 15, 1918, be, and they are hereby, approved; the said tariffs, with a reference to this order, to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27118.

In the matter of the application of the Canadian Consolidated Rubber Company, Limited, Montreal; the Goodyear Tire and Rubber Company of Canada, Limited, Toronto; the Dunlop Tire and Rubber Goods Company, Limited, Toronto; and the Gutta Percha and Rubber Limited, Toronto, for revision of the ratings of rubber and rubber articles as they appear in Canadian Freight Classification No. 16.

File No. 19367.69.

TUESDAY, the 9th day of April, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*HON. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, November 20, 1917, the applicants, the Canadian Manufacturers' Association, the Canadian Freight Association, the Toronto Board of Trade, and the Grand Trunk, Canadian Pacific, and Canadian Northern Railway Companies being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered:

1. That the application for a carload rating on rubber boots, shoes, and socks be, and it is hereby, refused.
2. That item No. 32, page 122, of the Canadian Classification No. 16, be corrected to read as follows:—

	L.C.L.	C.L.
Tires, solid, on reels or spools, burlapped..	1	3

3. That item No. 16, page 21, and item No. 30, page 35, of Supplement No. 10 to the Canadian Freight Classification No. 16, be corrected to read as follows:—

	L.C.L.	C.L.
Tires, pneumatic, including inner tubes—		
In bales or bundles, burlapped..	1½	—
In boxes or crates..	1	—
Loose or in packages named C.L. minimum weight 16,000 pounds. (<i>See Note</i>).. . . . .	...	2

NOTE—When shipped loose, must be loaded and unloaded by owners.

And it is further ordered: That the changes herein mentioned be made effective in Supplement No. 11 to Classification No. 16, now before the Board for approval.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 27121.

In the matter of the application of the Lake Erie and Northern Railway Company hereinafter called the "applicant company," under sections 327 and 331 of the Railway Act, for approval of its Standard Freight Tariff of Maximum Mileage Tolls C.R.C. No. 103 and its Standard Passenger Tariff naming maximum fare per mile C.R.C. No. 23.

File No. 18034.109

WEDNESDAY, the 10th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The said standard freight and passenger tariffs having been filed on the basis permitted by the Board in its Order No. 27105, dated April 4, 1918.

It is ordered: That the applicant companies' said Standard Freight Tariff of Maximum Mileage Tolls C.R.C. No. 103, and the said Standard Passenger Tariff C.R.C. No. 23, dated to become effective April 15, 1918, be and they are hereby approved; the said tariffs with reference to this Order to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27125.

In the matter of the train service of the Canadian Northern Railway Company between Deseronto and Toronto; and the Orders of the Board Nos. 26865 and 27001, dated respectively December 26, 1917, and February 18, 1918, made herein.

File No. 17090.

THURSDAY, the 11th day of April, 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed on behalf of the Canadian Northern Railway Company, and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said Orders Nos. 26865 and 27001, dated respectively December 26, 1917, and February 18, 1918, be, and they are hereby, rescinded; and that the Canadian Northern Railway Company's time-table showing train No. 9 leaving Napanee at 6 a.m., arriving Toronto 11.30 a.m., and train No. 10 leaving Toronto at 4.45 p.m., arriving at Napanee at 10.30 p.m., daily, except Sunday, effective April 21, 1918, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 227.

In the mattter of "The Daylight Saving Act, 1918."

File No. 27921.

FRIDAY, the 12th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas the said Act provides, among other things, that the Board shall have power to advance by one hour the standard time used by railway companies, including Government Railways, in Canada for such period as may be prescribed by the Board, and to make such orders as may be necessary for the convenient carrying out of the provisions of the Act, in so far as railway companies may be affected thereby;

And whereas the Governor in Council, by Order in Council No. P.C. 898, dated April 12, 1918, prescribed that the said Act should come into force at two o'clock on Sunday morning, April 14, 1918, and remain in force until two o'clock Friday morning, the 31st day of October, 1918.

In pursuance of the powers conferred upon the Board under the said Act, and to obviate confusion with the public which might otherwise result,—

It is ordered: That all railway companies, including Government Railways, in Canada be, and they are hereby, directed and required to advance by one hour the

standard time now observed and used by them in the different zones in which they operate; the said change to become effective on the respective railways and in the said different zones not before twelve o'clock Saturday evening, April 13, and not later than two o'clock Sunday morning, April 14, 1918, and to remain in force and effect until two o'clock on Friday morning, the 31st day of October, 1918.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 228.

In the matter of "The Daylight Saving Act, 1918; and the General Order of the Board, No. 227, dated April 12, 1918."

File No. 27921.

TUESDAY, the 16th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

It is ordered: That the word "Thursday" be substituted for the word "Friday" where the latter occurs in the recital and operative parts of the order.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27128.

In the matter of the application of the Gilson Manufacturing Company, Limited, the International Malleable Iron Company, Limited, and the Guelph Stove Company, all of the city of Guelph, in the province of Ontario, under the provisions of the Railway Act, for an Order directing the Canadian Pacific and Grand Trunk Railway Companies, to provide interswitching facilities between their railways.

File No. 6713.88.

WEDNESDAY, the 17th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading the application and what has been filed on behalf of the railway companies interested and upon its being represented to the Board that the Grand Trunk Railway Company's cartage arrangements at Guelph are to be cancelled owing to the company's inability to secure teams,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby required to construct and provide an interchange track between its tracks and the tracks of the Grand Trunk Railway Company in the said city of Guelph; the Canadian Pacific Railway Company to submit within one week from the date of this Order, a detail plan of said interchange track; the work to be commenced forthwith upon the approval of the plan by an Engineer of the Board and carried on to completion with the least possible delay.

2. That the company upon whose line, including private sidings contributory thereto, the traffic is loaded, shall be entitled to the line haul and to the privilege of effecting the required delivery on the line of the other company by means of inter-switching at destination.

3. The question of the apportioning of the cost of constructing and maintaining the inter-switching connection hereby directed to be provided, is reserved for further consideration and determination by the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27137.

In the matter of the application of the Board of Trade of Sturgis, Saskatchewan, for an order requiring the Canadian Northern Railway Company to construct a larger station at that point.

File No. 28547.

WEDNESDAY, the 17th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of an Inspector of the Board, the railway company consenting,—

It is ordered: That the Canadian Northern Railway Company erect a station at Sturgis, Sask., in accordance with its Standard Third Class Station Plan on file with the Board; the work to be completed by the 1st day of October, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27144.

In the matter of the application of the Kettle Valley Railway Company for an order extending the time within which it was required under the order of the Board No. 26719, dated November 7, 1917, to enlarge the freight shed end of the station building at Rock Creek, B.C., twelve feet, so that the freight shed room will be 14 feet by 20 feet.

File No. 18705.269.

SATURDAY, the 20th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application by the Premier and Minister of Railways for the province of British Columbia, and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the time within which the said work may be completed be, and it is hereby, extended until the 1st day of August, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27141.

In the matter of the application of the Alberta Farmers' Co-operative Elevator Company, Limited, for an order directing the Grand Trunk Pacific Railway Company to appoint a station agent at Kinsella Station, in the province of Alberta.

File No. 4205.142.

TUESDAY, the 23rd day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company, and upon the report and recommendation of an Inspector of the Board concurred in by its Chief Operating Officer, the railway company consenting,—

It is ordered: That the Grand Trunk Railway Company appoint a station agent at Kinsella Station, in the province of Alberta, as soon as it can obtain the services of a competent man and not later than June 1, 1918.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 163.

Flagging Signals Double Track—Rule 35, General Train and Interlocking Rules.

File 4135.38.

April 9, 1918.

The Board has under consideration the matter of more adequate flagging protection on double tracks and I give you below draft of Order which it is proposed to issue in this connection:—

“On double track where trains run to the left a yellow flag on two staffs, or a yellow light 5 feet above rail level placed to the left side of a track as seen by an engineer of an approaching train, with a yellow flag, or a yellow light, as a marker placed on the opposite side of the track to be protected, indicates that the track 3,000 feet distant is in condition for a speed of but 6 miles an hour, unless otherwise instructed and the speed of trains will be controlled accordingly. A green flag, or a green light, placed beside the track on the left hand side as seen by an engineer of an approaching train, at a point beyond the slow track, indicates that full speed may be resumed.”

Railway companies subject to the jurisdiction of the Board are requested to file within thirty days from the receipt of this circular such comments as they may wish to make thereon.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

CIRCULAR No. 164.

Preventable accidents to railway employees.

File 28293.

April 15, 1918.

The Board notes from its reports that a considerable number of accidents result from employees attempting to get on or off moving cars or engines, or attempting to crawl under moving cars, or to get through moving cars between or over couplers. The following detail shows the situation for the years 1916 and 1917, as disclosed in the Board's reports:—

	1916.		1917.	
	K.	I.	K.	I.
Jumping off train in motion.	5	14	1	28
Attempting to board train.	2	14	2	26
Adjusting couplers, coupling and uncoupling.	5	39	5	53
Crawling under cars. . . . .	..	1	..	1
Crawling through cars over couplers.	1	..	..	7
Caught while passing through cars between couplers.	3	4	..	—
Riding on pilot of engine.	2	2	1	3
	<hr/>	<hr/>	<hr/>	<hr/>
	18	74	9	118

The employees killed in 1916 from the classes of accidents above set out amount to 15 per cent of the total employees killed, while for 1917 the figures are 5.7 per cent. Those injured represent for 1916 9.5 per cent, and for 1917, 10 per cent.

This represents a preventable injury; and the Board desires each railway subject to its jurisdiction to bring this matter, by bulletin or other publication, properly before the attention of its employees, so as to prevent in so far as possible the occurrence of such accidents.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

CIRCULAR No. 165.

Accidents to railway employees where two main tracks parallel each other.

File 28433.

April 19, 1918.

The following rule has been adopted by some railways under the Board's jurisdiction for the protection of employees where two main tracks parallel each other and are less than twenty feet from centre to centre, viz.:—

“Where two main tracks parallel each other and are less than twenty feet from centre to centre, whether such tracks are for double or single track operations, employees in every instance, when stepping out of the way of approaching trains, must move to the right of way and not to the other track. Foremen will be personally responsible for educating their men accordingly.”

The Board desires to be informed by all railways within its jurisdiction whether they have such a rule in effect, and if not, what, if any, objection they would urge against the rule in question being applied generally.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. VIII

Ottawa, May 15, 1918

No. 4

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Seniority between the Midland Railway Company of Manitoba and the Grand Trunk Pacific Railway Company, at a crossing in the parish of St. Boniface.

JUDGMENT. MAY 20 1918

File 18122.2.

Heard at Winnipeg, March 16, 1917.

The ASSISTANT CHIEF COMMISSIONER:

The Midland Railway Company, incorporated by the legislature of the province of Manitoba, applies to the Board to determine which railway company is senior at a crossing of the tracks of the Midland over the tracks of the Grand Trunk Pacific on block 2, parish lot 56, in the parish of St. Boniface.

The steps taken by the railway companies which have any bearing on the question of seniority at the crossing may be best set out in their chronological order.

The Midland Railway Company purchased block 2, parish lot 56, St. Boniface, in 1905; and, title thereto was vested in the company on the 5th October, 1906, by a certificate of title under the provisions of the Real Property Act of the province of Manitoba. This block is nearly 600 feet long and 300 feet wide. Block 2 and adjoining property, also of a width considerably in excess of ordinary width of the right of way of a railway was acquired by the Midland company for the purposes of its railway, it being suitable for yards and station grounds. A plan showing the approved location of the Midland railway on a 100-foot strip of land through the west end of block 2 was registered in the Winnipeg Land Titles office on the 3rd May, 1906.

The location of the Grand Trunk Pacific Railway through block 2 and over the approved location of the Midland Railway was approved by order of this Board, No. 3507, dated August 15, 1907. The application for this approval was made and the order issued without notice to or the actual knowledge of the Midland Railway.

The approved location plan of the Grand Trunk Pacific was deposited in the Land Titles office, August 20, 1907. The Grand Trunk Pacific Railway was built through block 2 in 1908 without notice to or the knowledge of the Midland Railway. Upon the matter being brought to the attention of Mr. B. B. Kelliher, then Chief Engineer of the Grand Trunk Pacific, he wrote Mr. A. H. Hogeland, Chief Engineer of the Midland Railway, on January 29, 1909, in part as follows:—

"I would like you to understand that it was by no means intentional that we went ahead and constructed our line over the property of the Great Northern (Midland) Railway without first endeavouring to acquire the right of way in the usual way and respect the wishes of your company in that matter.

"You will see from attached blue-print the actual conditions. We have installed a new interlocking plant at that point and have made provisions for the levers necessary to include your line when you construct it."

In 1911 the Midland Railway decided not to construct its railway on the location through block 2, as shown on the location plan deposited in the Land Titles office in 1906, but on a location through the same block 2 but some distance to the east of the original location of 1906. Plan of the new location through block 2 and over the Grand Trunk Pacific tracks was duly approved by the provincial authorities and deposited in the Land Titles office on the 10th August, 1911.

By Order No. 14996, dated 15th September, 1911, this Board authorized the Midland Railway Company to join its tracks with the tracks of the Canadian Northern Railway Company and cross the tracks of the Grand Trunk Pacific Railway Company on block 2, as shown on the location plan of the Midland Railway deposited in the Land Titles office on August 10, 1911.

The Grand Trunk Pacific Railway has from time to time offered to purchase a right of way for its railway through block 2 from the Midland Railway Company, but no agreement has ever been reached.

Subject to the effect, if any, of the depositing of the Grand Trunk Pacific location plan in the Land Titles office in 1907, the Midland Railway Company is still the owner of block 2.

The question for the Board to determine now is, which railway is senior so that the adjustment of the cost of the construction and maintenance of the interlocking plant at the crossing may be arranged between the companies on the usual senior and junior rule.

The position of the Midland Railway Company is in no way hampered by the fact that it is a provincially incorporated railway.

This Board has jurisdiction to regulate the crossing of a provincial over a Dominion railway. In *Lake Erie and Northern v. Brantford Street Railway*, 16 C.R.C., page 245, the present Chief Commissioner said:—

"It is argued that a distinction cannot be made and that a provincial line has just as much right to maintain its seniority as a Dominion line. No distinction can properly be drawn depending on the accident of incorporation. If the Brantford Street Railway instead of being a street railway was an ordinary railway, although subject to provincial jurisdiction, its seniority would have to be maintained throughout."

See also the decision of the Privy Council on this point in *Attorney-General for Alberta v. Attorney-General for Canada*, A.C. 1915, p. 363; and the judgment of the present Chief Commissioner in *City of London v. London Street Railway*, 16 C.R.C., p. 436.

Prior construction at the point of crossing was held by the late Chief Commissioner Mabey to give seniority, notwithstanding the fact that the railway company held to be junior had deposited the plan of its railway over the land where the crossing was ultimately constructed before the date when the senior railway company's plans were deposited. But the company held to be senior was the owner of the land at the point of crossing prior to the plans of either company having been deposited in the registry office. *C.N.R. v. C.P.R. (Kaiser Crossing Case)*, 7 C.R.C., p. 297.

In the *Nakomas Crossing Case*, G.T.P. and C.P.R. 7 C.R.C., 299, the C.P.R. was prior in sanction, location, and construction at the point of crossing to the G.T.P. Subsequent to its application to the Board to determine the question of cost of construction and maintenance at the crossing, the G.T.P. received a patent from the Crown of the land at the point of crossing; but, the late Chief Commissioner Mabey held that the C.P.R. company's contract with the Dominion Government, to be found in 44 Vic., chapter 1, gave the company authority to construct branch lines of railway

from any point or points along its main line to any point or points within the territory of the Dominion, such lines being shown on a plan deposited in the Department of Railways. And, that the Government was bound under the contract to grant to the company the lands required for such branches in so far as such lands were vested in the Crown. Therefore, the C.P.R. having constructed its branch line by virtue of the authority of the statute, became entitled to a grant conveying its roadbed and that for the purposes of the application of the Railway Act and the disposition of the question of seniority the production of the Crown grant to the G.T.R. should not displace or curtail the rights of the C.P.R. obtained under prior legislation and acted upon by placing its railway upon the ground. On those facts the C.P.R. was declared to be senior.

The ownership of the land upon which the crossing is constructed is an important element in determining the question of seniority. In the *St. Hyacinthe Case, G.T.R. v. United Counties Railway*, 7 C.R.C. 294, it was decided that:—

“A railway company having the right, under its charter to construct one or more sets of tracks becomes the senior company not only when its line is crossed by the line of a junior company, but also in respect of the crossing of any additional tracks subsequently laid by it, and the junior company must bear the expense of making and protecting all such crossings, as new tracks are laid by the senior company.”

In the more recent case of *Erie and Ontario Railway v. Niagara, St. Catharines and Toronto Railway*, 18 C.R.C. p. 29, prior ownership of right of way was held to give seniority over prior construction of railway.

In the present case I think the prior ownership of the land with the right to lay its railway upon it, gives the Midland Railway seniority over the G.T.R. notwithstanding the latter company's prior construction. The Midland Railway acquired title to the property in question on October 5, 1906, and on and after that date it had the right to build its railway on the property and put down as many additional tracks on its own property that it wished. The fact that the location of its main line of railway was at a subsequent date, changed from one place to another place on its own property, does not take away any of its rights in so far as the G.T.P. is concerned. At the time that the G.T.P. Railway Company went upon block 2 to build its railway it had no title to the fee in the soil, it did not acquire any by the construction of its railway, and it has not acquired any title as yet to its right of way across the property in question. In applying to the Board for approval of its method of crossing the tracks of the G.T.P. Railway Company the Midland Railway Company merely complied with the provisions of the Railway Act, and its doing so cannot be construed as any recognition of seniority in the G.T.P. tracks.

The Midland Railway owned the land. It is quite evident from the size and location of the property that it was acquired and held by the railway company for railway purposes. It would be quite suitable for a railway yard and was doubtless purchased for that purpose as it is convenient to Winnipeg. In any event, the Grand Trunk Pacific made no contention to the contrary.

Following the decisions of the Board which I have reviewed, I think the principle can properly be established that on facts as they appear in this case, ownership of the land with the right to build a railway thereon gives seniority.

I think an order should go declaring the Midland Railway to be senior at the crossing in question.

OTTAWA, April 4, 1917.

Mr. COMMISSIONER McLEAN:

The history of the steps connected with the various locations and approvals is set out in the reasons for judgment of the Assistant Chief Commissioner.

The Midland, as constructed under the revised location of 1911 and the Board's connecting and crossing order of 1911, crosses the G.T.P. at a point where the eastern limit of the Midland right of way intersects that of the G.T.P., said point being approximately 170 feet east of the easterly intersection of the G.T.P. right of way with that of the Midland right of way, as approved by the provincial authority under the location of 1906.

The question involved is whether the Midland is senior at the point of crossing under the revised location of 1911.

The fee at the point of crossing both under the location plan of 1906 and that of 1911 was in the Midland. Various decisions of the Board have recognized the significance of the ownership of the fee.

The St. Hyacinthe case, G.T.R. Co. v. United Counties Ry. Co., 7 Can. Ry. Cas., 294, is not on all fours with the present application. There, the situation was that there was in fact a Grand Trunk track in place on its own right of way when the United Counties Railway desired to cross, and the question involved was as to seniority in respect of subsequent crossings by the United Counties Railway of other lines of rails on the Grand Trunk right of way. *Erie and Ontario Ry. Co. v. N. St. C. and T. Ry. Co., 18 Can. Ry. Cas., 29*, is also distinguishable. What was there involved was that when a railway company has secured a right of way its tracks on that right of way, no matter when laid, are always senior to those of any railway company desiring to cross such right of way.

The present situation is concerned with the question of seniority on a later earmarked location.

In the *Kaiser Crossing Case, Canadian Northern Ry. Co. v. Canadian Pacific Ry. Co., 7 Can. Ry. Cas., 297*, the Canadian Pacific which held the fee and had actually constructed was held senior to the Canadian Northern which had a prior location. In the *Nokomis Crossing Case, G.T.P. Ry. Co. v. Can. Pac. Ry. Co., 7 Can. Ry. Cas., 299*, the delimitation of the attributes of seniority was carried further. It was held that, as affecting the matter of ownership, the statutory rights of the Canadian Pacific to a grant covering its roadbed, such grant following under the statute as a result of its construction, gave it a property right which was not displaced by the subsequent Crown grant obtained by the Grand Trunk Pacific. Ownership thus existing, the decision goes on to delimit the other earmarks of seniority, as being priority of sanction, location and construction.

The location plan of 1906 possessed priority of sanction. The location plan of 1911 was not prior in sanction, location or construction.

The Midland contends that the ownership of the tract of land on which both the locations of 1906 and 1911 are situate as railway land confers the attributes of seniority no matter when and where a location is made by it on same tract. At the recent Winnipeg sitting, Mr. Thomson, who appeared for the Midland, took the position set out in the following extract from the evidence (Vol. 262, p. 475):—

“Mr. THOMSON: Our position is that the whole property is acquired for the railway. It could not be suggested that if we had our tracks constructed here, and they wanted to cross our tracks even although constructed on land which is not shown on the approved right of way plan, that we would not be senior to them.

“Commissioner McLEAN: Do you contend that if they got a location approved across your property and constructed, and then subsequently you desired to construct and cross at the point of construction, you would still be senior on the question of protection?

"Mr. THOMSON: Yes.

"Commissioner McLEAN: Although they would have priority of construction?

"Mr. THOMSON: Yes, absolutely."

The Board has, in dealing with another subject matter, said that not mere ownership but, instead, use, should be taken as the criterion of whether land owned by a railway was entirely taken, as to its treatment, out of the category of private ownership. *G.T.R. v. C.P.R. (Junction Cut, Hamilton). File 1852.4.*

In *City of Edmonton v. Calgary and Edmonton Railway Company, 18 Can. Ry. Cas., 420*, the Board had before it a case where a railway location was approved and subsequently the owner of the fee registered a subdivision plan showing certain streets. The Board said at p. 423:—

"Under these circumstances, I think the right of the landowner to lay out the streets is subject to the railway's location plan and the rights which the railway company secured thereunder to proceed with the undertaking. In other words, if the proceedings go on, the line is built and the location plan stands; and subsequent registration of a plan opening highways is inefficient as against the railway company and does not discharge the railway's interest in the *locus in quo*."

See also *City of Edmonton v. Calgary and Edmonton Ry. Co., 53 S.C.R., 406*.

The location plan approved in 1906, involving as it did an intersection of the subsequently approved and constructed Grand Trunk Pacific line, did not give the Midland rights of seniority as to the whole block of land involved. Whatever rights of seniority were conferred by the priority of its location plan of 1906 were in respect of the specific right of way involved in the approval. The Midland cannot, on abandoning this location, impute these rights to a right of way approved subsequently to the construction by the Grand Trunk Pacific across the land embraced in such later approved right of way. The location plan of 1911 falls within the reasoning in *City of Edmonton v. Calgary and Edmonton Ry.*

April 25, 1917.

Mr. COMMISSIONER BOYCE:

Upon the facts presented, which are set out fully in the opinion of the Assistant Chief Commissioner, I am unable to reach the conclusion that seniority rests with the Midland Railway.

If the reasoning that ownership of the fee of a block of lands, by a railway company, subsequently occupied, as to a portion thereof only, by a duly sanctioned right of way, gave that road priority or seniority over another and earlier constructed railway built through a portion of the same land under the powers of the Railway Act, there would not only be created an anomalous condition of things, but fairly well settled authority would have to be disregarded.

In *Canadian Northern Railway Company v. Canadian Pacific Railway Company, 11 C.R.C., 432*, this Board decided, "that construction and not approval of location gave priority"; and that dictum was quoted with approval in the judgment of Anglin, J., in *City of Edmonton v. Calgary and Edmonton Railway Co., 53 S.C.R., at p. 415*.

In the same case (53 S.C.R., 406) is also quoted with approval the dictum of the late Chief Commissioner in the "Kaiser Case," 7 C.R.C., 297.:—

"I do not think that the mere approval of the plans filed with it necessarily gives seniority to the plans first approved. It seems to me that the railway that is in actual occupation *with an existing work upon the ground*, with the ownership of the fee at the point of crossing, has much stronger claims to seniority than the railway which has merely obtained a prior sanction of its plans."

Whatever may have been the intentions of the Midland company as to the use of the land to which they secured the fee—and they are somewhat obscure—the settled elements necessary to the acquisition of seniority for that railway were not acquired quoad their right of way in respect of which seniority is now claimed, and which is not the right of way approved in 1906, but were acquired by the Grand Trunk Pacific line by the location of their line, acquisition of right of way and construction thereon of their line of railway. Had the Midland adhered to its original right of way sanctioned in 1906, and constructed thereon in priority to the other line, the conclusions as to seniority might have been different.

The authorities referred to in the judgment of the Assistant Chief Commissioner do not lead one to the conclusion that prior ownership of the fee is a deciding element as to seniority, standing alone, but rather that it may become a negative factor when unaccompanied by definite location and construction of the railway thereon in compliance with statute law governing such. I think this is the case here, and that the Grand Trunk Pacific Railway superseded the Midland as to priority by the acquisition of its right of way and construction and establishment of its railway thereon, while the Midland was choosing its precise location with *intent* to build. It seems to me that if, on the facts shown, the Midland can claim seniority now over the Grand Trunk Pacific Railway, the element of prior construction and establishment must be eliminated from consideration altogether. It would, therefore, be quite as competent for the Midland to claim its seniority twenty years from now, by ownership of the fee, were that the deciding factor in determining seniority.

I agree with the reasons and conclusions of Mr. Commissioner McLean that the Grand Trunk Pacific Railway is the senior railway as regards adjustment of rights at this crossing.

OTTAWA, May 3, 1918.

Complaint of the Calgary Live Stock Exchange against discontinuance by railway companies of practice of sanding cars for live stock.

File 15958.15.

JUDGMENT.

MR. COMMISSIONER McLEAN:

Complaint was made as to the discontinuance of sanding cars used in the shipment of stock. It was contended by applicants that the placing of sand on the floor of the cars was necessary in order to give the cattle a proper foothold, thus safeguarding and protecting them.

This matter was set down for hearing and was directed to stand until the application for the 15 per cent increase in passenger and freight rates had been dealt with.

The Canadian Pacific Railway Company stated that it objected to doing this work free of charge; and it was contended by Mr. Wade, who appeared for the shippers, that the providing of sand on the floor of the car was part of the obligation of the railways as to providing proper equipment. The railway stated that it provided a suitable vehicle—that is to say, the car. It stated that when the cars were cleaned in transit it resands them, putting back clean bedding into the car; that what was being attempted was to put the obligation as to sanding cars on the railway at the initial shipping point, and this was regarded as not being an obligation imposed on the railway by the Railway Act, but that it was properly a burden which should be looked after by the shipper.

At the hearing, Mr. Wade protested against the discontinuance of the sanding of cars; and he said that if an arrangement could be made with the railway companies whereby the sand would be supplied at not too great a charge it would be a great convenience. He said the parties whom he represented did not object to paying a charge so long as it was not excessive, and on being questioned as to what he considered a fair charge he suggested a charge not exceeding \$1 per car.

The situation now is that by item 62 of Supplement 7 to C.P.R. Tariff C.R.C. W-2250, effective October 1, 1917, it is provided that when cars furnished for shipment of live stock are sanded by the railway company a charge of \$1 per car will be made for this service, in addition to the published tariff rates. Similar provision is carried in the tariffs of the Canadian Northern Railway Company. Further action is therefore unnecessary.

The Chief Commissioner concurred.

Application of the British Columbia Electric Railway, on behalf of the Vancouver and Lulu Island Railway and the Vancouver and Fraser Valley Railway, to increase the freight rates of these railways, to conform with the increases granted by the judgment of the Board, dated December 26, 1917, to steam railways operating in the Pacific territory.

File 28439.

JUDGMENT.

MR. COMMISSIONER McLEAN:

Application is made by the British Columbia Electric Railway, on behalf of the Vancouver and Lulu Island Railway and the Vancouver and Fraser Valley Railway, for permission to increase by 10 per cent the freight rates on the portions of its system which are subject to the Board's jurisdiction, the increases as asked for being the same as have been allowed by the Board in respect of the steam lines subject to the Board's jurisdiction operating in British Columbia. The portions of the British Columbia Electric subject to the Board's jurisdiction are the Vancouver and Lulu Island Railway, with a mileage of 26.9 miles, which is leased from the Canadian Pacific, and the Vancouver, Fraser Valley and Southern, with a mileage of 14.7.

The applicant was directed by the Board to serve on the municipalities affected copies of the application and the reasons therefor. Service was accordingly made on the Boards of Trade of New Westminster, South Vancouver and Vancouver, and on the municipalities of Richmond, South Vancouver, Point Grey, Burnaby, New Westminster, and Vancouver. The lines concerned operate through the municipalities in question.

Protest was made by the Corporation of the District of Burnaby, by its solicitors, against the freight increases asked for on the Vancouver-Steveston and New Westminster-Eburne lines of the Vancouver and Lulu Island Railway and the Burnaby Lake line of the Vancouver-Fraser Valley and Southern Railway; and it was asked that no action should be taken pending hearing. The Board is now advised by the solicitors for Burnaby as follows:—

“*Re* B.C.E.R. FREIGHT RATES.

“No. 28439.

“We are instructed by the Municipal Council of Burnaby to withdraw the protest against the raising of freight rates by the British Columbia Electric Railway, Limited, on the Vancouver-Steveston and New Westminster-Eburne lines of the Vancouver and Lulu Island Railway and the Burnaby Lake line of the Vancouver-Fraser Valley and Southern Railway, as contained in our letter of 15th March last.

“The Transportation Committee of the Council of Burnaby have gone into the matter with the representative of the railway company and are satisfied that the increase, if granted, will not impose any serious hardship upon the residents of Burnaby.”

No other representations have been made by the municipalities and bodies concerned. The matter is ripe for decision on the material before the Board.

The details for the period covering the fiscal year ending June, 1915, to June, 1917, inclusive, show large increases in material costs comparable with those set out in the applications of the London and Port Stanley and the London and Lake Erie Electric railways. The characteristic average for all commodities concerned shows 1917 prices 54 per cent over those of 1915.

Taking wages on common units of time, an analysis of the detail furnished shows the following percentage increases in 1917 over 1915:—

Freight—Motormen and conductors, brakemen, trolleyemen—	Per cent.
Lulu Island Railway..	21
Vancouver, Fraser Valley and Southern..	20
Shops and barns..	23
Freight sheds (checkers and truckers)..	29
Maintenance of way (track maintenance men, track greasers)..	35
Electrical workers..	31

The following table sets out the freight and passenger earnings, the operating expenses and operating net for the fiscal year ending June, for the period 1915 to 1917:—

VANCOUVER AND LULU ISLAND RAILWAY

Earnings—	1915.	1916	1917.
Freight..	\$ 63,152	\$ 65,446	\$110,600
Passenger..	137,201	89,292	86,164
Total..	\$200,353	\$154,738	\$196,764
Operating expenses..	205,405	174,409	186,313
Net earnings.. (loss).	\$5,052	(loss)\$19,671	\$10,451

VANCOUVER, FRASER VALLEY AND SOUTHERN RAILWAY.

Earnings—	1915.	1916.	1917.
Freight..	\$ 5,778	\$ 5,239	\$ 3,916
Passenger..	52,010	34,815	31,611
Total..	\$57,788	\$40,054	\$35,527
Operating expenses..	49,125	39,233	31,223
Net earnings..	\$8,663	\$821	\$4,304

While there has been in the case of the Vancouver and Lulu Island Railway an increase in the freight earnings of 1917 as compared with those of 1915, the passenger earnings have decreased by 46 per cent, and the total earnings are 2 per cent less. The operating ratio shows some betterment, being 94 per cent in 1917 as against 102 per cent in 1915. Comparing operating expenses, taking 1915 as the base, the operating expenses of 1916 were 84 per cent of those of 1915, while the figures for 1917 are 91 per cent of 1915.

In the case of the Vancouver, Fraser Valley and Southern Railway, the total earnings were 39 per cent less in 1917 than in 1915; the passenger earnings decreased 40 per cent, while the freight earnings decreased by 33 per cent. The operating ratio in 1915 was 85 per cent; in 1917 it was 88 per cent.

On the basis of the general figures submitted, as measured by the figures for the year ending June, 1917, there are involved for the Vancouver and Lulu Island, \$110,600, and for the Vancouver, Fraser Valley and Southern, \$3,916, making a total of \$114,516 of freight revenue. Ten per cent on this would add \$11,413.

The company points out that corrections must be made in order to arrive at the earnings which will be affected. On the basis of the figures for the year ending June, 1917, it submits the following computation:—

BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY, LIMITED.

Statement Gross Freight Earnings Year ended June 30, 1917—

Gross freight revenue, all lines..		\$466,076 07
Less car rental, switching, express, etc..		83,181 12
Total freight earnings..		\$382,894 95
Less earnings on joint business..		193,717 15
Total local earnings..		\$189,177 80
Earnings of Saanich Division..	\$ 11,490 19	
“ British Columbia Electric Railway..	24,883 50	
“ Vancouver Power Co..	88,742 59	
		\$125,116 28
		\$64,061 52
Vancouver and Lulu Island Railway..	\$60,144 96	
Vancouver, Fraser Valley and Southern Railway..	3,916 56	
		\$64,061 52

The foregoing statement is explained by the company as follows:—

“In this statement, the company has attempted to show the freight revenue involved, on the basis of last year’s earnings, in the present application. The first item is the gross freight revenue over all lines, amounting to \$466,076.07. From this is to be deducted car switching, etc., amounting to \$83,181.12, for which no increase is asked, and also an amount of \$193,717.15, being the earnings on a joint business, that is to say, interchange between the company’s lines and the steam railways. This amount, of course, is not involved in the application, as earnings from that source are a matter of arrangement between the company and the steam lines. This leaves the company’s total local earnings of \$189,177.80. However, this amount must be reduced by \$125,116.28, which represents the local earnings on lines not subject to the Board, leaving an amount of \$64,061.52, divided as follows:—

Vancouver and Lulu Island Railway..	\$60,144 96
Vancouver, Fraser Valley and Southern Railway..	3,916 56

“which is in fact the total earnings affected by the application.”

On this basis, a 10 per cent increase would give a gross addition of \$6,406.

Whether the larger or the smaller figure is taken, it must be remembered that the computation is concerned with gross figures and that to get at the net return to the company allowance must be made for the operating ratio.

The figures as given in the foregoing table are exclusive of overhead expenses and depreciation. The following table shows the effect of total expenses, including the above items:—

Vancouver and Lulu Island Railway—	1915.	1916.	1917.
Earnings..	\$200,353	\$154,738	\$196,764
Total expenses..	278,568	253,120	257,903
Loss..	\$78,215	\$98,382	\$61,139
Vancouver, Fraser Valley and Southern Railway—			
Earnings..	\$57,788	\$40,054	\$35,527
Total expenses..	68,720	56,356	44,410
Loss..	\$10,932	\$16,302	\$8,883

While the Board has no jurisdiction over the greater part of the mileage embraced in the British Columbia Electric System, the following table may be referred to as affording a conspectus of the situation on the whole system:—

Entire Railway System—			
Earnings.. . . .	\$2,936,755	\$2,437,873	\$2,689,519
Total expenses.. . . .	3,337,110	3,061,437	3,177,488
Loss.. . . .	\$400,355	\$623,564	\$487,969

In the figures as given above, there is no return on capital.

The difference between operating expenses as shown in the first table and total expenses as shown in the second table is attributable to the items of overhead expenses and renewals maintenance. Overhead expenses cover all expenses which cannot be charged directly to the light, power or railway departments of the company's business. These expenses are entirely operating expenses, and are made up of the following items:—

- Salaries and expenses of general officers and general office clerks.
- Maintenance and upkeep of head office building, including fuel, heating, janitor's wages, etc.
- General insurance, taxes, stationery, postage, etc.

The practice is to apportion at the end of the year the total amount charged to overhead expenses between the different departments, on the basis of direct operating expenses. Checked on this basis, the overhead expenses chargeable against the Vancouver and Lulu Island and the Vancouver, Fraser Valley and Southern, amounting in 1917 to \$26,014 and \$4,901, respectively, check out at 7.9 per cent and 1.4 per cent of the total overhead expense of the whole system. This corresponds roughly with the ratios of the total business of each of the component portions herein concerned to the earnings of the total system.

Renewals maintenance is a depreciation account figured on the basis of the following table:—

	Per cent.
Track work including roadbed, but not including overhead work.. . . .	1
Overhead work—	
Lines.. . . .	3
Poles, wood.. . . .	10
Iron.. . . .	1
Rolling stock—	
Bodies.. . . .	7
Trucks.. . . .	3
Electric and steam plant, machinery and tools.. . . .	5
Buildings.. . . .	1½
Bridges.. . . .	10
Automobiles.. . . .	15
Horses.. . . .	20
Meters.. . . .	5
Transformers.. . . .	5
Lamps.. . . .	5

The depreciation thus charged against the Vancouver and Lulu Island is 7.9 per cent of the depreciation account of the whole system, while for the Vancouver, Fraser Valley and Southern it is 1.4 per cent. There is a substantial correspondence between the volume of business concerned, as represented in revenues and the proportions of the depreciation charge.

While the conditions are not entirely on all-fours, the Board recognized in *City of Montreal v. Bell Telephone Co.*, 15 Can. Ry. Cas., 118, at p. 135, that an average percentage depreciation of 6.77 was reasonable. As the matter of depreciation as dealt with below is taken, on the reasons set out, as only an approximate measure of the reasonableness of what is asked for, differences in condition, which may exist, between the two types of utilities are not important in this connection.

The depreciation charge for 1917 against the Vancouver and Lulu Island is \$45,576. This depreciation is computed on book value, not on cost of reproduction. Applying the average depreciation percentage above referred to, the result would be a book value of \$673,157. Similarly the \$8,286 of depreciation charge in the case of the Vancouver, Fraser Valley and Southern would represent a book value of \$122,384.

There is nothing set out in the application, either by admission or contention, taking the position that the depreciation figures as given are a criterion of earning power. So far as the depreciation figures themselves are concerned, it is said by the company that in the case of track work the rate of depreciation is too low, and that it will have to be increased so soon as the revenue from the railway shows any signs of being able to stand an additional charge.

The company's statements as submitted show that the Vancouver, Fraser Valley and Southern has no separate bond issue distinct from that of the British Columbia Electric. It has a capital charge of \$764,000, which at 5 per cent would represent a carrying charge of \$37,200. The Vancouver and Lulu Island is leased from the Canadian Pacific at \$25,000 a year. There has been, in addition, an expenditure by the British Columbia Electric in connection with this of \$1,083,000. At 5 per cent, this would represent a carrying charge of \$54,150.

It is not necessary, in what is involved, to make any detailed analysis of the capital charges above set out. The question of a return at 5 per cent, by way of interest, on the book values above set out will afford an approximate index of the situation of the lines concerned.

To earn 5 per cent on their respective book values over and above operating expenses and depreciation, the Vancouver and Lulu Island would need to earn \$33,657, while the Vancouver, Fraser Valley and Southern would need to earn \$6,119.

As already indicated, the situation in 1917 was that on the basis of operating expenses, overhead and depreciation, the Vancouver and Lulu Island had a deficit of \$61,139, while in the case of the Vancouver, Fraser Valley and Southern the deficit was \$8,883; and this allows nothing whatever for interest, however computed. The sums set out in the preceding paragraph are over and above those here dealt with.

The Board has held that the standard passenger rate in British Columbia is sufficiently high. The present application for increase of freight rates has been justified, and the increases as allowed in the case of steam railways in British Columbia may become effective in fifteen days from the date of the order making this judgment effective.

April 23, 1918.

The Chief Commissioner concurred.

ORDER No. 27159.

In the matter of the application of the British Columbia Electric Railway Company on behalf of the Vancouver and Lulu Island Railway and the Vancouver and Fraser Valley Railway Companies, for authority to increase the freight rates of the said railway companies to conform with the increases granted under the judgment of the Board, dated December, 26, 1917, to steam railway companies operating in the Pacific territory.

File No. 28439.

FRIDAY, the 26th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered:

1. That the applicant company be, and it is hereby, authorized to increase by 10 per cent the freight rates on the portions of its system which are subject to the jurisdiction of the Board, the rate on coal to be increased 15 cents a ton.

2. The increased rate herein authorized to become effective within fifteen days from the date of this order.

H. L. DRAYTON,
Chief Commissioner.

Re Files Nos. 18402.8; 18402.76 to 18402.85; 18402.87 to 18402.94; 18402.96 to 18402.100.

And, in the matter of the application of Frank Decicco and Mary Decicco, of North Bay, and O. Conti, of North Bay, Ont., for compensation arising from the construction of the right of way of the Canadian Northern Railway Company through the town of North Bay; and, application of John Pelangio (Giovanni Pelangio) and Maria Pelangio, of North Bay, for compensation for damages arising from the construction and maintenance of the C.N.R. through the said town of North Bay and by reason of the blocking and closing of certain highways in the town of North Bay, Ont.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

Application heard at North Bay, 26th September, 1917, by land owners for compensation for damages caused by construction of Canadian Northern Railway across highways in the town of North Bay.

The application, which was preceded by a great deal of correspondence between the interested parties and the Board, and which is on file, resolves itself into a complaint under section 26 of the Railway Act, on behalf of land owners at North Bay, that the railway company and the corporation of the town of North Bay have failed to carry out their respective, or joint undertakings, contained in Order No. 20500 of this Board, dated 1st October, 1913, which sanctions the carrying of the railway across certain streets in North Bay, mentioned in the Order, upon the conditions therein specified, and that the terms of the Board's Order have otherwise not been complied with.

The location plan of the railway through North Bay was approved by Order No. 17906 of the Board.

Application was then made to the Board, under section 235, by the railway company for leave to cross certain streets in North Bay, to close those streets, and plans showing the proposals of the company were filed, when a hearing was ordered and the application was heard at North Bay, July 18, 1913, in presence of all parties interested in, or opposing the application.

Reference was made at the hearing of the crossing application to the fact that the corporation of the town of North Bay and the railway company were agreed as to the manner in which such highway crossings were to be carried out, and as to the general terms and conditions with respect to them, subject to which the Order of this Board sanctioning the crossings was to be made, and memorandum of such agreement was subsequently filed. It was understood that the agreement between the railway and the town should be the basis of the Order the Board was to make sanctioning such crossings.

The Order, therefore, issued October 1, 1913, recites that the municipality undertakes to close "those portions of Regina, Sherbrooke, Commercial, Cedar, and Fraser streets, and Second avenue, which are covered by the applicant's right of way." The Order is further conditioned as follows, viz.:—

"5. That the applicant company be responsible for any damages which property owners affected may be legally entitled to recover under the Railway Act and the Municipal Act."

The railway company, by the Order, conditioned as above, was authorized to cross certain streets along its route through North Bay shown on plan, and mentioned in the Order, some at grade, some by subway, and otherwise, to carry out its proposals as regulated by the Order and subject to its terms, and did so construct its line blocking and closing streets in the town and causing damage to land owners adjacent or abutting on the crossings, who were, it is said, "property owners affected," which it is now represented to the Board have never been satisfied. From the date of the making of this Order there were raised many questions as to the effect of the terms of the Order as to recovery of damages and the forum in which they should be recovered. At one time, January, 1915, the railway company, through its solicitor, Mr. Temple, contended that the Board, and the Board alone, should deal with all questions relating to land damage. Up to that time there seems to have been a desire on the part of the railway to carry out the terms of the Order. On Mr. Temple's contention, and nearly two years before this application was made, the Board expressed the view (18 C.R.C. 309), that as the parties had covered questions of damage by agreement, the remedy was to the courts upon the agreement. The Privy Council, however, in *Holditch v. C.P.R.* (1916) A.C. 1, p. 535, otherwise construed section 235 of the Railway Act, as amended, so as to render the opinion of this Board then expressed as not now effective. To the same effect was the judgment in *Brant v. C.P.R.*, 36 O.L.R., p. 619.

Since that time, and with the direction of the matters in question in the hands of another solicitor than Mr. Temple, the policy and attitude of the railway towards claims of landowners under the Order in question became entirely changed and very much less indication was shown of the same desire to carry out the ethics and bona fides of the undertakings and agreements embodied in the Order and to which any rights granted thereby to the railway company were, as they now are, subject.

Actions having been commenced at law to enforce claims for damages at the instance of landowners, the courts, following *Brant v. C.P.R. supra*, expressed the opinion that the jurisdiction rested with this Board. Thus claimants were shut out of the courts.

Efforts were then made on behalf of the landowners to have the town council's undertaking in the Order carried out by the passage of a by-law closing the specified

streets, which would give the claimants, as they contended, a right to proceed under the appropriate clauses of the Municipal Act. This was not done, for the reasons which are referred to in the argument of counsel for the applicants, to which I shall presently refer.

No effort was put forward by the railway company, after conduct of this matter passed from Mr. Temple's office to Mr. White's, to establish a forum or to, in any way, facilitate any adjudication upon the claims other than by making such settlements as appeared to the railway company's solicitor to be reasonable from the railway company's point of view. That is, no settlements were made except upon terms satisfactory to the railway company. The claimants (landowners affected) were knocked about from pillar to post, had reached an "impasse" in their efforts to enforce their rights under the order, and hence this application to the Board by way of complaint that the terms of the order for the benefit of landowners whose holdings are affected have not been carried out, and for such order as will give relief in this very vexatious and long-standing affair.

From the argument of Mr. McKay, K.C., counsel for some of the landowners affected, I summarize the following as the basis of the complaint against the railway company's failure to conform to the provisions of the order:—

1. That the town corporation has not complied with its undertaking, expressed in the order, to close the streets mentioned; and

2. That the railway company has prevented the town corporation from doing so, and has itself neglected or refused to compensate the landholders affected, and has designedly prevented and obstructed them in all efforts they have made, or are making, to secure the payment of any compensation to which they may be entitled as a result of the closing up of the streets.

3. That "there was a plainly definite and openly expressed intention on the part of the railway company, so far as they were concerned and so far as they could get the town to act with them, to distinctly do away with the conditions upon which the Board made its order approving of this right of way." (Evidence, p. 5350, vol. 276.)

As supporting these serious charges, Mr. McKay refers to exchange of correspondence between Mr. McNamara, town solicitor of North Bay, and the solicitors for the railway company (p. 5348), referring to the undertaking of the town to close the streets by proper by-law, and referring to his letter of February 2, 1916 (p. 5348), to the fact that the agreement between town and company has never been completed, stating that in his opinion a by-law should be passed and asking for completion of the terms of the agreement. He is referred to Mr. Peter White, K.C., "*who has charge of the land damage against the company*" (p. 5346), whose letter to Mr. McNamara (at p. 5349) of 22nd February, 1917, so plainly sets forth the attitude the railway company was taking, that I quote from it the following:—

"Re Closing of Streets in the Town of North Bay.

"DEAR SIR,—Your letter of February 2nd to Mr. Reid, of the company's legal department, has been handed to me. In my view, there is no necessity, for the present at least, for the passing of a by-law closing the streets. *We think, so far as the streets are concerned, we are in a proper position, by reason of having obtained the approval of the Board of Railway Commissioners for Canada. It will therefore not be necessary for the town to take any further action except at the request of the railway company, should it later on be decided that any action is necessary.*

"In respect of the lands that the company has given to the town for the streets, as these are open highways at the present time, and the dedication is quite apparent, we do not see any necessity for the conveyance to the town. However, if the town desires this, there is perhaps no objection to having the property conveyed.

"I am taking the liberty also of writing to the mayor and council of North Bay in respect of this matter *as possibly, owing to my position, they may look to me to protect them.*" (P. 5349, 5350, vol. 276.)

Counsel for the complainants points out that the action of the railway company in, shall we say, persuading (?) the municipality to make default in its undertaking to close the streets puts the landowners claiming compensation in a helpless position, in view of the foregoing recited facts. If they claim against the municipality, that body says, "we have passed no by-law, we have closed no streets. If you have any claim it is against the railway company who did the damage. And, if they sue the railway company, they are met with the answer that what they did they did under the Order of the Board of Railway Commissioners for Canada, which I presume, is "the proper position" the railway company desires to be in as asserted by Mr. White in his letter before quoted.

Mr. McKay asks the Board to make an Order providing means for landowners affected to recover the compensation which, by the terms of the Order, the railway company was to pay and has not paid. It is represented that there are a number of claims for compensation unsettled, and in the proceedings to enforce which, obstructions are placed by the railway company in this way.

Mr. White, K.C., who appeared as counsel for the railway company endeavours to answer the complaint by evading it. He says, in effect, that the railway company arranged with the town to "make settlements of these claims (landowners where we considered there was any merit in them, or where they could be settled for a reasonable sum at all" (Evidence top of p. 5357). That the company had advertised, (informally and not under any statutory, or judicial, or quasi-judicial procedure) for claimants, and had settled some, which are specified (at very small sums in proportion to what was claimed) but, always upon the principle of the *railway company paying only what the railway company considered to be fair and reasonable*, and in utter disregard of the terms of the railway's agreement incorporated into the Order of the Board providing for the recovery of such damages "which property owners affected *may be legally entitled to recover under the Railway Act and Municipal Act*, i.e., in an impartial judicial manner. Mr. White, further presents to the Board the argument, that "the Board, having made the Order, has no jurisdiction now to make an Order saying that by reason of the granting of that Order somebody has suffered damage and order damage accordingly." "The only time at which the Board can order damages to be paid is when the Order is being made by the Board." (Evidence p. 5360, Vol. 276).

But, it may here be observed, that this contention is diametrically opposite to that of Mr. Temple (who preceded Mr. White in the conduct of this matter for the railway), and who wrote to the Board, under date January 26, 1915, stating that in their view the Board was the only proper forum to say whether damages should be paid. The contentions therefore, of counsel for the railway company resolve themselves into this, that the company and town having failed in their undertakings, the Board must leave the unhappy claimants landowners in their present unenviable position, which, put shortly, is to accept what the railway company is willing to pay them, or suffer the wrong imposed upon their holdings without a remedy—a proposition which received its condemnation many centuries ago. No other relief or remedy is suggested than that on behalf of the railway company.

Subsequent to the hearing, counsel for the railway company placed his views further before the Board. I extract the following from Mr. White's letter to the Board of February 21, 1917:—

"I must further point out that clause 6 of the agreement, whereby the company undertook to pay all damages which were legally recoverable, means that the railway is entitled to *take the benefit of any appropriate statutory provisions limiting the period within which proceedings must be commenced.*"

And there is placed on file a copy of the defence of the railway company in an action brought against it by one Randall Forder for compensation for injury to his holdings under the order complained of, and in which the railway pleaded in answer,

justification *by sanction of this Board*, and, that if plaintiff's lands had been injuriously affected, the railway company was not legally liable to pay damages in respect thereto; and that the plaintiff, *not being a party to the agreement between the railway company and the town* (incorporated into the Board's order) "*cannot claim any right thereunder*," and "*not guilty by statute*." Sections 151, 155, 232, as amended by the Statutes of Canada, 1911. Chapter 22, section 6, sections 235, 237, and 306 of the Railway Act. The latter section being the limitation clause. The same plea was doubtless made by the railway in defence of every other action brought, and evidently blocked the proceedings at law.

Let us examine the powers under which the Board acted in making the order in question. Section 235 of the Railway Act, as amended by 1-2 George V, chapter 22, section 6, reads:—

"Subject to the company making such compensation to adjacent or abutting landowners as the Board deems proper, the railway of the company may be carried upon, along or across an existing highway upon leave therefor having been first obtained from the Board as hereinafter authorized," etc.

Prior to the amendment, no question of compensation appeared in the section. The section was amended as a result of the decision of their lordships of the Privy Council in the case of *Town of Fort William v. Grand Trunk Pacific Railway*, 1912, A.C. p. 224, for reasons well known and cited by counsel. By the section (235) as amended, the Board, *subject to compensation being made*, gives its sanction to the crossing; and, following the case of *Holditch v. Canadian Northern Ontario Railway* (1916), A.C. p. 536, at p. 543, the awarding of such compensation rests, in the present state of the law, with the Board. If, then, this being the statute law when Order No. 20500 was made (as subsequently defined by the Privy Council as above), the Board, instead of exercising its functions and providing for the fixing of the compensation, relied upon (1) the undertaking of the municipal council to close (by by-law) the streets in question, which would provide a forum and machinery by which damages to property of landowners affected could be ascertained, and (2) upon the railway company's agreement to pay such compensation as should be legally recoverable under the Railway Act and Municipal Act, and incorporated both those undertakings into its order as its provision for the rights of landowners affected, and if, by the means employed, both undertakings prove ineffective for the accomplishment of the objects intended, can it be said that the Board has discharged its functions under section 235? I think not. If I read the section aright, the right of the railway company to carry its line upon, along or across an existing highway, and the Board's jurisdiction to sanction such a crossing, are both "*subject to the company making compensation*," etc. If, for the moment, the Board accepts, and incorporates into its order, undertakings to compensate—which are not carried out—but which appear to have been very indifferently respected, if not wilfully and designedly ignored, are the owners to be deprived of the duty towards them which Parliament imposed upon the Board, for their protection, when framing the amended section, and is the railway company to get the lands, sanction, and rights "*Scot free*," or for just such amounts as it chooses to pay without any judicial finding of the amounts? In my opinion, such is an illogical and unmoral contention, and, coming as it does, from the very source of the evasive tactics unfortunately employed, with more subtlety than wisdom, to negative what provision the Board thought it was making, and intended to make, for the protection of the landowners, it does not commend itself for justice or fairness. Mr. White's contention that the Board is now helpless, and that the landowners must be left to the tender mercies of the company, would have been just as cogent had no negotiations whatever been made by the railway with any claimant for compensation. It is, as has been previously remarked, the very opposite of the view expressed by the solicitor of the railway who previously had charge of these matters for the railway.

Without the sanctioning Order of the Board the railway has no right to occupy the streets. *West v. Parkdale*, 7 O.R. 270; 8 O.R. 59; 12 A.R. 393; 12 S.C.R. 250;

and 12 A.C. 602. Section 235, as amended, gives the Board power to sanction such crossings only *subject* to compensation to adjacent or abutting landowners. If such compensation is not made to all landowners entitled, it can be urged that the sanction dependent upon it fails and the railway has no rights, but is a trespasser quoad the crossings.

It is impossible to avoid the conclusion that the undisputed facts force upon us. The undertakings and agreements of town and railway respectively providing for compensation being incorporated with the Board's Order as its protection to the landowners were ignored, with the result that the railway company was enabled to practically constitute *itself* the forum to which injured landowners must resort for compensation, and to prevent them from having recourse to any independent forum. Certainly, such appeared to be the object of the railway. Else, why did its counsel urge the council of North Bay not to pass the by-law. Else, why did the railway's counsel plead the limitations section of the Act, to action of compensation brought by a landowner, Randall Forder, and probably the actions of others? Else, why did the railway contend at the hearing that the Board should, not and could not order now what the railway company had professed to undertake to do; and also set up solemnly, by pleading in the courts, that no landowners injuriously affected by the carrying out of the Board's Order by the railway could claim any right under the agreement with the town of North Bay as to damages incorporated into the Order as the Board's disposition of the question of damages?

The Board in making the Order *did* intend to provide that its sanction should be "subject to compensation being made to the landowners, as provided by section 235, and if its Order and intent have been barren of result in this respect, it is for no other reason than that the undertakings and agreements it relied on and made part of its Order for affecting such object were made worthless by the subsequent devices of the railway company to render them inoperative.

The railway has occupied the streets and otherwise taken all the benefits of the enabling Order so obtained, without complying with the conditions imposed by statute and the Board as to compensation and otherwise, and to which the right of the railway to carry its line across said streets was subject. It is but equitable that if it takes the benefit of the Order, it should fulfill its obligations. The Board, since the hearing, and under date January 31 last, in conformity with an interim memorandum of Mr. Commissioner McLean, January 29, 1918, placed the facts fully before the railway expressing its hesitation in believing that the company is desirous of avoiding its obligation and asking its views before giving judgment on this application. The reply of the company, through its counsel, is as unsatisfactory as was his argument at the hearing. It, in effect, scoffs at its professions and casts its undertakings to the winds. The town council, on the other hand, has stated its position in the following resolution, passed February 4 last, and filed with the Board February 7 last:—

"That whereas the Town of North Bay and the Canadian Northern Railway entered into an agreement in 1913.

"And whereas by the terms thereof the Town of North Bay agreed to close certain streets in the said town, and the Canadian Northern Railway agreed to pay all damages arising therefrom.

"And whereas the Canadian Northern Railway now take the position that they will not compensate the town if the streets are closed by the town, and that they do not require the streets to be closed as they have obtained permission to cross said streets from the Board of Railway Commissioners for Canada.

"And whereas the said railway have blocked up those streets mentioned in the said agreement, and there are a number of claimants who have sustained damages and have not been compensated.

"Therefore the council of the town of North Bay request the Board of Railway Commissioners for Canada to close the streets mentioned in said agreement and provide for compensation by the Canadian Northern Railway for those injured thereby."

The above shows pretty clearly the attitude of the town council and the pressure brought to bear upon it to ignore its undertaking as to closing the streets.

I think it becomes the duty of the Board, upon the facts placed before it by this complaint, to grant a remedy and make such order as will put the parties in the position in which it was intended to place them by the original order, and in furtherance of the statutory duty imposed upon the Board by section 235. In my opinion that can best be done by altering the order granting the sanction. (Order No. 20500, 1st October, 1913.)

Section 29 of the Act, as amended, empowers the Board to rehear any application before deciding it, or to review, rescind, change, alter or vary any order or decision made by it.

The order will be amended in the following manner:—

(a) *Clause 1.*—Inserting after the word “that” and before the word “the” in the first line thereof, the words: “Subject to the company making such compensation to adjacent or abutting landowners as the Board may deem proper, which compensation shall be ascertained and determined in the manner hereinafter provided the said”

(b) *Clause 2.*—Inserting after the first word “that” the words “Subject as aforesaid.”

(c) Suspending any order or rule of the Board limiting or restricting such amendment as to time or otherwise.

(d) Rescinding the decision of the Board, of 15th February, 1915, 18 C.R.C. 309.

(e) *Clause 5.*—Adding to clause 5 a clause providing that the compensation to be made by the applicant company to adjacent or abutting landowners, and to which landowners affected may be legally entitled, shall be determined by the Board, after inquiry, at a sittings of the Board at North Bay, and the hearing of all persons interested in such questions of compensation, and the investigation of all matters in dispute. All necessary proceedings to be taken and directions to be given for the purpose of determining all questions and matters with regard to such questions of compensation; or, referring all such matters and questions to a member of this Board for inquiry and report by such member of this Board to be appointed by the Board, or by the Chief Commissioner, under section 13 as amended, by 7-8 Edward VII, chapter 62, section 4; or by a person to be appointed by the Board under section 60, and make full provisions for such inquiry and report in the order.

If there be a hearing by the Board upon such questions of compensation, all questions involved can then and there be dealt with. If a member of the Board, or some other person, be delegated, further directions and questions of costs and all other matters proper to be dealt with by the Board will be reserved until after report shall have been made. The report should show what claims of landowners have already been satisfied and in what manner. Subject to the above, the terms and form of the Order can be settled if necessary.

I think that the municipal corporation of North Bay should forthwith pass the by-law it undertook to pass closing the streets. Probably this Board has no power to order it to do so, but its intention as expressed in the recent resolution justify the hope that when the matter is again brought to its notice in the light of the view of the Board and the amended Order, there will be immediate and strict compliance with all that it has undertaken.

OTTAWA, April 24, 1918.

The Assistant Chief Commissioner and Mr. Commissioner McLean concurred.

ORDER No. 27149.

In the matter of the complaint of General Sam Hughes, M.P., on behalf of residents of Haliburton county, in the province of Ontario, against the train service furnished by the Grand Trunk Railway Company on its Haliburton Branch between Lindsay and Haliburton.

File No. 13838.

TUESDAY, the 23rd day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the railway company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, required to operate its trains Nos. 389 and 390 between Lindsay and Haliburton, Ont., three times a week, namely, on Tuesdays, Thursdays and Saturdays, as follows: Train No. 389 to leave Lindsay at 11 a.m., arriving at Haliburton at 2.05 p.m.; and train No. 390 to leave Haliburton at 3 p.m., arriving Lindsay at 6 p.m.

2. That the present schedule between Lindsay and Kinmount Junction on Mondays, Wednesdays, and Fridays, and connection with the Canadian Northern Railway Company's Irondale Subdivision train at Kinmount Junction be maintained.

3. The train service herein required to become effective April 28, 1918, and be maintained until further order.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27150.

In the matter of the application of the Canadian Pacific Railway Company for leave to make reduction in its train service on western lines, and in the matter of the complaint of R. F. Thompson, M.P., that the said railway company has cancelled the Weyburn local trains Nos. 315 and 316.

File No. 27563.56.4.

THURSDAY, the 25th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*
✓ A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to restore the train service on its Portal subdivision formerly in effect, viz.: Train No. 315 to leave Moosejaw at 8 a.m., arriving at North Portal at 1.55 p.m.; returning train No. 316 to leave North Portal at 4.30 p.m., arriving at Moosejaw at 10.30 p.m., daily, except Sundays; the said service to be put into effect not later than the 29th day of April, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27162.

In the matter of the application of the Canadian Pacific Railway Company hereinafter called the "applicant company," under Section 258 of the Railway Act, for an Order approving the location of its station building at Amisk, Alta., required to be erected under the Order of the Board No. 26521, dated September 13, 1917, as shown on the plan dated Moosejaw, March 6, 1918, on file with the Board under File No. 22360.

THURSDAY, the 25th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board and the consent of the rural municipality of Huamha, No. 393 filed,—

It is Ordered: That the said plan showing the proposed location of the applicant company's station at Amisk, in the province of Alberta, on file with the Board under file No. 22360, be, and it is hereby, approved; the station building to be erected in accordance with the applicant company's A-2 standard plan, on file with the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27160.

In the matter of the complaint of the Dominion Cannery, Limited, Hamilton, Ont., and the Board of Trade, Picton, Ont., regarding joint rates on canned goods, and in the matter of the proposed Joint Class Freight Tariff of the Canadian Pacific and Grand Trunk Railway Companies.

File No. 27256.1.

FRIDAY, the 26th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The matter having been heard at Ottawa, April 16, 1918, and upon its appearing that the parties will not be able to agree prior to April 30,—

It is ordered: That pending a hearing and until further order of the Board, the proposed Joint Freight Tariff of class rates, Canadian Pacific Railway, C.R.C. No. E-3439, and Grand Trunk Railway, C.R.C. No. E-3842, be, and the same is hereby, suspended.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27161.

In the matter of the application of the Canadian Pacific Railway Company hereinafter called the "applicant company" under Section 258 of the Railway Act, for approval of the location of its station building at Tramping Lake, in the Province of Saskatchewan, as shown on plan dated Moosejaw, March 6, 1918; on file with the Board under file No. 27666.

FRIDAY, the 26th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, the rural municipality of Mariposa, No. 250, offering no objection although duly notified, as appears by affidavit of service of notice of the application filed,—

It is Ordered: That the proposed location of the applicant company's station building at Tramping Lake, in the province of Saskatchewan, as shown on the said plan on file with the Board under the said file No. 27666, be, and it is hereby approved; the station building to be erected in accordance with the applicant company's A-2 standard plan on file with the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27163.

In the matter of the application of the Canadian Pacific Railway Company hereinafter called the "applicant company" under Section 258 of the Railway Act, for approval of location of its station building at Primate, in the province of Saskatchewan, as shown on plan dated Moosejaw, March 5, 1918, on file with the Board under file No. 25176.

FRIDAY, the 26th Day of April, A.D., 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, the rural municipality of Eye Hill No. 382, offering no objection although duly notified, as appears by affidavit of service of notice of the application filed,—

It is Ordered: That the proposed location of the applicant company's station building at Primate, in the province of Saskatchewan, as shown on the said plan on file with the Board under the said file No. 25176, be, and it is hereby, approved; the station building to be erected in accordance with the applicant company's A-2 standard plan on file with the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27164.

In the matter of the application of the Canadian Pacific Railway Company hereinafter called the "applicant company," under Section 258 of the Railway Act, for approval of the location of its station building at Magrath, Alta., required to be erected by the Order of the Board No. 26389, dated August 1, 1917, as shown on the plan dated Calgary, September, 1917, on file with the Board under file No. 27860.

FRIDAY, the 26th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board and the consent of the Department of Railways and Telephones for the province of Alberta, filed,—

It is Ordered: That the said plan showing the proposed location of the applicant company's station building at Magrath, in the province of Alberta, on file with the Board under file No. 27860, be, and it is hereby, approved; the station building to be erected in accordance with the applicant company's A-2 standard plan on file with the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27170.

In the matter of the application on behalf of coal operators in the Drumheller District, Province of Alberta, for an Order directing the Canadian Pacific and the Canadian Northern Railway Companies to provide transfer facilities between their respective railways at a point slightly to the west of Baintree Station, on the Canadian Northern Railway.

File No. 21181.

TUESDAY, the 30th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed on behalf of the Canadian Pacific Railway Company, and the report and recommendation of the Chief Operating Officer of the Board,—

It is Ordered: That the Canadian Pacific Railway Company be, and it is hereby, required to construct a transfer track between its railway and the railway of the Canadian Northern Railway Company at a point west of Baintree station, in the province of Alberta; detail plans to be filed within thirty days from the date of this Order; the work to be completed within sixty days after the approval of the plans; and the cost of constructing the said transfer track to be apportioned equally between the Canadian Pacific and the Canadian Northern Railway Companies.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27176.

In the matter of the complaint of H. Dupuis and Company, of Glen Robertson, Ont., the Board of Trade of Hawkesbury, and the council of the town of Hawkesbury, in the province of Ontario, against the station accommodation provided by the Grand Trunk Railway Company at Glen Robertson.

File No. 28294.

THURSDAY, the 2nd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the complaints, and on behalf of the railway company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Grand Trunk Railway Company be and it is hereby, required to erect a station building and platform at Glen Robertson, Ontario; plans showing the location and details of the proposed station to be filed with the Board for approval by the 1st day of June, 1918; work to be completed by November 1, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27178.

In the matter of the complaint of residents and farmers of Lamont and vicinity, in the Province of Alberta, that the Canadian Northern Railway Company has not provided proper station facilities at said point.

File No. 6516.

THURSDAY, the 2nd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the complaint, and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is Ordered: That the Canadian Northern Railway Company be, and it is hereby, required to enlarge the Waiting Room at Lamont, Alberta to 20 feet square (or equivalent space), and provide a heated room for perishable and express shipments, not less than 12 feet by 12 feet; the work to be completed not later than October 1, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27177.

In the matter of the Order of the Board No. 27150, dated April 25, 1918, directing the Canadian Pacific Railway Company to restore the train service on its Portal Subdivision formerly in effect.

File No. 27563.56.4.

FRIDAY, the 3rd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said Order No. 27150, dated April 25, 1918, be, and it is hereby, amended by striking out the figures "315" in the fourth line of the operative part of the Order and substituting therefor the figures "316"; and by striking out the figures "316" in the fifth line of the Order and substituting therefor the figures "315."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27179.

In the matter of the consideration of the question of the protection to be provided at the crossing of Tuscarora street by the Michigan Central Railroad, in the village of Hagersvills, province of Ontario.

File No. 26842.1.

FRIDAY, the 3rd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Hamilton, October 22, 1917, in the presence of counsel for the Michigan Central Railroad and the township of Oneida, and what was alleged,—

It is ordered: That the Michigan Central Railroad be, and it is hereby, required forthwith to appoint a day watchman on the said crossing of Tuscarora street, Hagersville, Ont.; the wages of such watchman to be borne and paid, 80 per cent by the railroad company and 20 per cent by the village of Hagersville.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27182.

In the matter of the application of the Temiscouata Railway Company, hereinafter called the "applicant company" under the amending Act, 7 and 8 Edward VII, section 11, chapter 61, for approval of by-law dated April 29, 1918, authorizing C. A. Stewart, Manager, and A. Nadeau, General Freight and Passenger Agent of the Company, to prepare and issue tariffs of tolls to be charged on the said railway.

Case No. 3055.

MONDAY, the 6th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-law be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27183.

In the matter of the application of residents of the Townships of Hatley and Compton, in the Province of Quebec, for an order directing the Grand Trunk Railway Company to stop its mid-day trains on flag at Hillhurst Station, Quebec.

File No. 28015.

MONDAY, the 6th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer, and upon reading what is filed in support of the application and on behalf of the railway company,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, required forthwith to stop its trains Numbers 13 and 16 on flag at Hillhurst, in the province of Quebec.

H. L. DRAYTON,
Chief Commissioner.

SUPPLEMENT No. 1 TO CIRCULAR No. 110.

Accident Reports to the Board.

April 30, 1918.

Subsection 1, of section 292, of the Railway Act was amended by C. 37, 1917. S. 8, by adding at the end of the subsection the words:—

“Any conductors or other employees making a report to the company of the occurrence of any such accident shall as soon as possible after such accident notify the Board of same by telegraph.”

The Board directs that the conductors' or employees' reports shall be made at the expense of the company as soon as possible after the accidents, and shall contain the following information:—

- (a) Date and place of accident;
- (b) Name of railway;
- (c) Number and description of train or trains, engine or engines, concerned;
- (d) Number of passengers or employees injured;
- (e) What, if any, injury has been caused to the railway track, and to any bridge, culvert, viaduct, or tunnel on or of the railway; and
- (f) A short and concise statement of the apparent cause of the accident.

In addition to the accidents referred to in Circular 110 with which the companies were advised the Board would not deal and which need not, therefore, be reported, minor accidents, unless as a result of such accidents injury is caused to the railway track or to any bridge, culvert, viaduct or tunnel on or of the railway, as provided by paragraph (e) of this Circular, will not be dealt with by the Board, and consequently also need not be reported.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

CIRCULAR No 166.

File 16513. Inspection and testing of locomotive boilers and their appurtenances.

April 30, 1918.

Under clause 46 of General Order No. 78, dated July 14, 1911, railway companies are required to file not less than once each month and within fifteen days after each inspection, a report of inspection of each locomotive used by a railway company.

I am directed to ask that such reports also show conditions of nettings, dead plates, ash pans, dampers, and slides of locomotives and that the inspector who makes the inspection sign the report as to the conditions.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

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Ottawa, June 1, 1918

No. 5

Complaint of Retail Merchants' Association of Canada, Provincial Coal Section of Ontario, per H. A. Harrington, Toronto, Ont., regarding Canadian Pacific Railway interswitching charges or tariffs and arbitrary charge for placing of cars not directly consigned.

Consideration of further submissions of the Canadian Manufacturers' Association, the Toronto Board of Trade, and Mr. Robin Boyle, representing the shippers of crushed stone, with respect to Resolution No. 1-A of the Convention of Coal Dealers of Ontario presented by Mr. H. A. Harrington, Toronto, and heard at Toronto, April 13, 1917.

File 6713.135.

JUDGMENT.

Mr. COMMISSIONER McLEAN:

The application as launched was set out in the form of a set of resolutions.

Resolution No. 1-A reads as follows:—

“The Canadian Pacific Railway have caused a charge to be made on all cars as follows:—

“Where cars are consigned to one of their terminals direct one placing will be given free, within the jurisdiction of that terminal.

“Where cars are consigned to one terminal but are required within the jurisdiction of another terminal of the same railway, and although within the corporate limits of the city of Toronto, the Canadian Pacific Railway impose charges as follows:—

"Cars consigned "Toronto" if required at Parkdale.. . .	\$3 00
" " " W. Toronto .. .	4 00
" " " N. Toronto .. .	5 00

“You will readily see that not having the co-operation of the American lines and the eccentric deliveries of our own railways, that our dealers and wholesalers are unable to anticipate their shipments with any degree of accuracy, sufficient to cause cars to be consigned to terminals direct, as required by the railways.

"These charges are now being made and payment enforced, and as the rail-ways are unable to show any ruling of your Board on the same we would ask that you cause these charges to be suspended, pending the result of a **hearing** on same, which we ask you to have at an early date."

Resolution No. 1-B reads as follows:—

“That no changes in the switching, interswitching, or other terminal charges shall be made by the carriers, unless such changes are made under a ruling thereon secured from the Board of Railway Commissioners for Canada; and no application for any such change or changes shall be made to the Board of Railway Commissioners for Canada unless the carriers have notified all consignees at the terminal in which such changes are to be made, either in writing or by publication of such notice in the newspapers of the city, town or county in which such terminal is situate, once per week for a period of three weeks immediately preceding such application, stating the time and place at which such application will be made; and that the Dominion Railway Commission for Canada be requested to issue an order suspending any and all such changes made by the carriers, until the provisions of this resolution have been complied with.

“Resolved further,—That our secretary be requested to forward a copy of this resolution to the Board of Railway Commissioners for Canada, with a request that all charges made by the railways and covered by this resolution be ordered discontinued until the Railway Board have passed upon the same.”

This was withdrawn by Mr. Harrington at the opening of the first Toronto hearing.

Resolution No. 2 reads as follows:—

“That where a consignee has complied with the rule allowing twenty-four hours for clearance of customs, payment of charges and giving of placing orders, the carriers shall place such car as required within twenty-four hours after the receipt of such order, and where such carriers fail to comply within such placing order within the said twenty-four hours, they shall forfeit to the consignee from whom or for whom such placing order was given:—

“For the first twenty-four hours.	\$1 00
“ second twenty-four hours.	1 00
“ third and each successive twenty-four hours.	2 00.”

It is in reality an application for reciprocal demurrage. The Board in its judgment of July 28, 1917, dealing with the application of the Canadian Car Service Bureau for approval of revised Code of Car Demurrage Rules, file 1700, in ruling that reciprocal demurrage could not then be enforced used the following language:—

“Mr. Watts, who appeared for the grain trade, strongly supported reciprocal demurrage, but was of the view that today was not the proper time to deal with the question. His view was that it ought to be left open for consideration by the Board with open mind after the war, and when conditions were more normal.

“I think Mr. Watts’ position is correct, and the matter should be so left.”

Resolution No. 3 reads as follows:—

“That where the break-up yard of any railway is situate within the corporate limits of adjoining cities or towns, all private or public sidings abutting thereon shall be considered for the purpose of this resolution as forming part of such break-up yard, and that no charges shall be imposed on the consignee by the railways, either by application of tariffs or otherwise, for the placing of cars on such sidings.”

This resolution, as will be noted, is couched in general terms. At the first hearing, it developed that what was concerned was a complaint of difference in treatment in the West Toronto yard which overlaps into the limits of the Lambton station. The matter was taken up with the Canadian Pacific Railway, the railway concerned, and arrangement was made by it to obviate the extra switching charges for West Toronto

on coal being consigned to West Toronto which requires to be placed on sidings tributary to the Lambton yard. A further rearrangement was accomplished, this being the elimination of Lambton station from the freight tariffs and the withdrawing of the freight agent at that point, so that the point in question would in future be considered part of West Toronto terminals.

Resolution No. 4 reads as follows:—

"That where a car or cars are consigned to consignee at a terminal, such consignee is entitled to have such car or cars placed on any private siding or on a public siding within the corporate limits of the city or town within which such terminal is situate, without extra charge."

This, which is also couched in general terms, reduced itself to a complaint of overcharge on the part of the Grand Trunk for switching coal, ex-C.P.R. to the York yard. Expense bills for two cars were filed and Mr. Chisholm was directed to investigate and report, which he did by letter dated April 21; and I find that under the lawfully filed tariff he is correct in reporting that no overcharge exists. The distance from the Bathurst street interchange to York is 6.3 miles, and the rate of the Grand Trunk's Special Mileage Tariff (C.R.C. No. E-3446) for the haulage of coal for any distance not exceeding 10 miles is $2\frac{1}{2}$ cents per 100 pounds, at which rate the charges on the four cars were assessed. The movement in question is outside of the 4-mile limit of the General Interswitching Order.

The territory covered by the tariff relating to reconsignment is set out as follows:—

Group No. 1, Toronto.—Simcoe street (Toronto yard) sidings, Esplanade sidings, Bathurst street to Church street.

Group No. 2, Don.—East of Church street to Don, including Municipal Industrial track (east side), also all Don Branch sidings.

Group No. 3, Parkdale.—West of Bathurst street to Dundas Street bridge.

Group No. 4, West Toronto.—West of Dundas Street bridge to West Toronto, and east to Ossington avenue (on North Toronto branch).

Group No. 5, North Toronto.—East of Ossington avenue (on North Toronto branch) to and including Leaside junction.

Group No. 6.—Swansea, Mimico, and New Toronto.

As indicative of the charges on reconsigned traffic, the following may be noted:—

Group No. 1 to Group No. 2.	\$3 00
" " 3.	3 00
" " 4.	4 00
" " 5.	5 00
" " 6.	4 00

The reconsignment charges to which exception is taken are set out in C.P.R. Tariff C.R.C. E-2646, effective November 10, 1913. The same charges also appear in C.P.R. tariff, Supplement No. 54 to C.R.C. E-2646, effective February 15, 1917; but the rates in question are noted simply as being a charge without involving either advance or reduction. The only change is that the following heading over the item "Reconsigned Traffic":—

"Carload freight on which the Canadian Pacific Railway is receiving a road haul, and upon which track delivery is given twenty-four hours will be allowed the consignee, after notice of arrival of cars, in which to pay charges and give orders for special placing and delivery.

"When such orders are not received within time above mentioned, cars will be placed on public team tracks, and if request is made to deliver at some other recognized terminal in Toronto, the following additional charges will be made:"

is left out of the supplement now effective; but this heading appears to be already covered by the Car Service Rules.

Prior to the change referred to, when Supplement 54 to the Canadian Pacific's local switching and interswitching tariff C.R.C. No. E-2646 became effective, the company allowed the consignee twenty-four hours after notice of arrival within which to give his orders for special placement of track delivery freight which the company had itself road-hauled. The consignee could require one free placement within the yard limits of the original destination for unloading, or one free reconsignment for unloading within the yard limits of another of the group of Toronto terminals.

If the consignee did not give his orders within the twenty-four hours, the tariff announced that the cars would be placed on the public team tracks, and if replacement or reconsignment was then required additional tolls were charged.

This entire arrangement was satisfactory to the coal trade, because it appears the shippers' practice had been to consign simply to Toronto, and as the road-haul ended in the break-up West Toronto yard the railway practice had been to hold there for placement orders.

The Canadian Pacific Railway takes the position that the purpose of its West Toronto yard is to break up and marshall trains, that it is sufficient for no other purpose, and that not only did the practice referred to entail a large use of trackage required for the primary purpose, but that by necessitating switching and reswitching to and from hold tracks it added greatly to the prevailing terminal congestion. The company claims that the new arrangement aids very materially in diminishing congestion and saves time, and ought, therefore, to be satisfactory to consignees.

In effect, the new system requires all carload freight for the Toronto group to be consigned in the first place to the particular terminal where it is to be unloaded, whether it be Toronto, Don, Parkdale, West Toronto, or North Toronto, the limits of each being indicated on the file map. This, of course, abolishes West Toronto as a hold-for-orders yard. The contention is that each of these points being a distinct station, with its own agent, staff, and accounting system, there is no valid reason why the same practice should not be followed as at other points on the company's railway.

The Retail Merchants' Association's position is that the transportation machinery is not working at all smoothly, with the result that owing to transit delays it is practically impossible to anticipate the arrival of cars with anything approaching certainty, and the further result that when they do arrive they may have to be reconsigned under the reconsignment tariff because the consignees for whom they were intended have had to be otherwise supplied in the meantime. Objection is not made to the reconsignment tolls after the cars have been once placed for unloading. A similar position is taken by Mr. Boyle in connection with the crushed stone trade in its season; it would seem to hold, in fact, in the case of those commodities which require to be handled in continuous movement.

In so far as the Grand Trunk is concerned, all eastbound freight is held at Mimico and westbound freight at York until advice is received from the consignee as to where he wishes the car placed. The first placing is made without charge. If a car has once been placed where it was first ordered, then if a second movement is made to another siding there is an extra charge.

Prior to the tariff of February 15, 1917, referred to, the practice of the Canadian Pacific had been, because of competitive conditions, to give the same treatment as above referred to.

In the complaint of A. H. Mayland, of Calgary, vs. C.P.R., file 25957.1, the Board by its order 24714 of February 9, 1916, directed that the complaint as to the additional charge for diversion at the terminal point should be dismissed, the charge concerned having been established as justifiable.

It developed that the practice of the Grand Trunk and Canadian Northern was not to make a charge when the point of diversion was within the same group of terminals. The C.P.R. Company was asked to justify its practice. It was stated by that railway that the charge was justified under the Board's order No. 6901, it being

contended that a car consigned to Montreal, under the Canadian Pacific practice, was consigned to a specific station, namely, Place Viger, and that if on its arrival at this point the railway was asked to place it at Outremont, Jacques Cartier, Mile End, or any other of its stations within the municipality of Montreal, this would be a diversion under the above order.

It was contended by the railway that the system was one of great advantage to the shippers and consignees in Montreal, and this position was admitted by Mr. Tils- ton of the Montreal Board of Trade as being a correct one. It was recognized that difficulties might arise owing to the fact that an innocent shipper not knowing the system and practice in Montreal, might bill this shipment to Montreal believing this would give him the right to have it placed on any of the several terminals within the municipality, without additional charge. Commissioner Goodeve, on whose memo- randum the order issued, was of opinion that this situation was taken care of by the directions contained in the tariff and instructions issued to the C.P.R. agents at all shipping points. The following opinion was further expressed in the memorandum in question:—

“It is clear from the evidence that if an attempt were made in large cities such as Montreal to have one general point to which all carload traffic would be consigned, there to be held until directions were given to place on a specific siding, would involve great confusion and delay, resulting in a loss to the shippers, and it would be impracticable to carry it out owing to the very large amount of space that would be necessary to obtain sufficient yardage.”

The question of extra charges in respect of reconsignment in the Toronto terminals, arising through error or mistake in billing, was emphasized at the Toronto sittings. It was pointed out that the consignor, either through error on his part or through lack of exact information on the part of the consignee, might bill goods to Toronto; then if, for example, the consignor ships goods to Toronto expecting this open billing to take the goods to destination instead of making shipment to Parkdale, where the siding of the consignee is located, there would be an extra charge for reconsignment. The applicants contend that since the railway is acquainted with the location of the consignees' siding, the billing should be checked so that the car would go right through to the proper destination, thus obviating the extra charge.

At Montreal, the Canadian Pacific has fourteen freight stations or terminals. In the portion of the tariff covering the Toronto terminals, detail is set out in connec- tion with each terminal showing the ownership of the private sidings and also indicat- ing the public sidings. The portion of the tariff dealing with Montreal carries similar information.

In a general way, it is contended that there is no justification for subdivision of terminals, so far as the rate practice is concerned; and that if there are separate freight stations and terminals, they should for rate practice be regarded as one, being treated as, in effect, co-terminous with the municipal limits of Toronto.

It may be noted that group No. 5 extends east of the municipal limits, and group No. 6 west thereof.

It may, however, be contended that the eastern and western extensions referred to are not material as affecting the principle.

The Board in dealing with the four-mile distance under the interswitching order met, at an early date, the contention of the railways that where a municipal or pro- vincial boundary intersected the said four-mile distance, the burden of the railway to carry did not go beyond that boundary. It was held by the Board that this contention was in error and that the obligation as to the four-mile distance was unqualified. If in the case of the area covered by Toronto there were separate municipalities of Toronto, Parkdale, North Toronto, etc., each with its own freight station and freight terminals, it is obvious that there could not be an open billing covering all these stations but that the billing would have to be of a specific point to which shipment

was intended to be made. There would be no doubt then that if through mistake the goods were consigned to Toronto, when they were intended for North Toronto, that the reconsignment charge would properly apply.

If the subdivisions into the different terminals concerned is a proper one, then while the different freight terminals in question are almost exclusively located within the municipal limits of Toronto, it does not seem to me that this differentiates the situation from one in which contiguous freight terminals are located in different municipalities.

It is contended, as above indicated, that the burden is on the railway to correct the error of the consignor or the oversight of the consignee as to billing. Such error or oversight would result in a reconsignment charge under the existing tariff. This contention does not appear to be a tenable one. The burden of the consignor or consignee is to see that proper information is given as to the destination of the goods, and the burden is on the railway to handle the goods accordingly.

While the system of separate freight terminals in Montreal has been approved, the decision, while inferentially bearing on the Toronto situation, is not of necessity conclusive in respect of Toronto.

The matter is one of operating conditions and as such has been gone into by the Board's Operating Department, which advises as follows:—

“The Canadian Pacific Railway have divided the terminals into groups, and they ask their shippers to bill to the central yard in each group. Any reconsignment from one group to another is charged for according to their tariffs. I find that this is the best principle to work on in a terminal the size of the city of Toronto and has an advantage over the Grand Trunk method, and that there should be less delay to freight because more of it will get to its final destination without the sorting yard ‘hold-up’ that necessarily follows on the Grand Trunk.”

It being justifiable from an operating standpoint to have distinct terminals, said subdivisions being in aid of and facilitating the movement, it follows that the provisions as to reconsignment complained of are provisions properly applicable.

Reference was made by Mr. Walsh to a carload of sugar for a Parkdale consignee, which had to go to the Simcoe street district for customs purposes and on which \$3 had to be paid for switching back to Parkdale; and it was suggested that had the car been consigned in the first place to Parkdale instead of Toronto the two switches would probably have doubled the charge.

The matter has been looked into and the Board is advised by the Customs Department that so far as the Customs is concerned no necessity exists for switching carload freight in bond to Simcoe street, when consigned to any of the Toronto sub-terminals. West Toronto is a Customs warehouse port of itself. At Parkdale, North Toronto, New Toronto, or Mimico, the cars are placed on the private siding of the consignee, if he has one, or the public team tracks, or at the railway freight shed, and appraisers are on hand or are sent from the customs-house for the purpose.

The Chief Commissioner, the Assistant Chief Commissioner, and Mr. Commissioner Goodeve concurred.

March 22, 1918.

JUDGMENT.

The complaint in this case is made by the Nanaimo Board of Trade. It concerns the Canadian Pacific Railway Company's tariff which eliminated Nanaimo, B.C., as a terminal freight point. The complaint at the time related very largely to that question.

In so far as the terminal point question proper is concerned, the judgment of Mr. Commissioner McLean, delivered on the original application deals directly with it.

Besides, however, the question of terminal rates, controversy subsequently arose with reference to the land rail haul, which was dealt with shortly in my judgment of March 16, 1916.

The question of the length of rail haul and discrimination or no discrimination rested on the question as to whether or not Ladysmith or Esquimalt was the terminal facility used by the Canadian Pacific.

The information that the Board then had was that the grid, or wharf, at Ladysmith was owned by a coal company, which had, however, permitted the Canadian Pacific to use it, but that the coal company was connected with the Canadian Northern interests and that the Ladysmith facility was being abandoned by the Canadian Pacific, and that that company ran its car ferry to Esquimalt.

While apparently the intention of the Canadian Pacific was to make Esquimalt their car ferry connection (probably owing to the fact that that company expected, in view of the activities of the Canadian Northern that it could no longer use the Ladysmith grid) as a matter of fact the Canadian Pacific continued to use the Ladysmith facility; and a re-hearing was, therefore, given at the request of the Nanaimo Board of Trade.

The matter was, therefore, subsequently heard at Vancouver on June 26, 1916, and has been since developed by further written submissions.

As already stated, the question of terminal rates was fully covered by Mr. Commissioner McLean's judgment. These terminal rates are very low, and were put in for the sole purpose of meeting water competition.

Under the authorities, it is entirely a matter for the company to decide whether it will or will not meet competition; and no order can be made in this connection.

I now consider the further issue developed.

As a matter of fact, the Canadian Pacific Railway Company have used both the Esquimalt and the Ladysmith transfers.

Mr. Coburn, who appeared for the complainants on this question of rail mileage, in part says:—

"Nanaimo is getting a rail movement of 14 miles, for which the consignees are paying. Victoria is getting a rail movement of 59 miles without charge. This proves conclusively that discrimination is shown and has been shown towards Nanaimo. This, in connection with the other statements we have made here to-day, and the proofs herewith attached, will convince the Board, we feel sure, of the existence of discrimination against our city.

"Commodity Mileage Freight Tariff No. W-3420, E. and N. Railway, No. 359, which took effect on July 30, 1915, advancing rates, effective east and west of Canmore, or Crows Nest, bases the rates charged thereunder on mileage charged from Vancouver, and placed Nanaimo 155.8 miles distant from that point. This is an injustice to Nanaimo that should not be allowed. At most it is not more than 59 miles: 45 miles by transfer and 14 miles rail movement."

Mr. Coburn claimed that Nanaimo's proper mileage ought to be 59 miles, made up of 45 miles car movement to Ladysmith and 14 miles rail movement to Nanaimo,

while the Canadian Pacific's tariff makes the Nanaimo mileage 155.8 miles, made up by the water trip Vancouver to Esquimalt, 87 miles, and mileage Esquimalt to Nanaimo, 68.8 miles.

Mr. Lanigan, who appeared for the Canadian Pacific, claimed that the Nanaimo transfer did not belong to the Canadian Pacific and that the coal company also owned the facilities between the gridiron and the connection of the Canadian Pacific Railway at Ladysmith; that this connection was practically in the hands of competitors; and that the company decided that it should establish its own transfer facilities at some point where a large proportion of the traffic would be transferred; and stated that, because of the tidal conditions, Esquimalt was decided upon as the proper place for that transfer. Mr. Lanigan claimed that it would be absurd to base any rate on a transfer which might be taken away from the company at any time. He further stated:—

“From hearing the statement of the Nanaimo Board of Trade one would imagine that a vast deal of money was involved in this, also a very large traffic, but they have overlooked the fact that special arbitraries are given over and above the Vancouver rate on flour and grain, and nearly every other commodity, of five cents per hundred pounds over the Vancouver competitive rate. I have taken out a statement, a copy of which I will file with the Board, showing the actual terminal traffic that was handled, and the actual charges assessed over and above the Victoria rates on these terminal rates. The actual charges amount to \$146.39; 88 carloads of traffic being involved. There has been an additional quantity of carload freight handled from mainland points into Nanaimo, but these have come from points quite close at hand. For instance the statement of billing I have in hand shows a point right here on Burrard Inlet, another Vancouver, another Winnipeg, Port Moody, and so on. I have taken out this statement of billing of cars that are affected by these terminal rates. Therefore, you will see that the mileage commodity rate on flour and grain, which would be the largest commodity that would be handled (and these commodity rates were mentioned, I think, by the Board of Trade of Nanaimo), is not affected because the rates to Vancouver, as you will find in the Western Rates Case, is lower than the mileage rate to Vancouver, and the rates that actually apply on the prairie products, such as flour and grain, plus 5 cents, is less on these commodities than is shown in the tariff; but, wherever that mileage commodity rate should govern, if it should govern, you must remember we have taken a continuous mileage to Ladysmith, we have not added the one cent per hundred, or the 20 cents per ton, that this Board has repeatedly advised would be quite proper in handling goods over two railways, that is low-class commodities, but we have given them the through mileage. But, wherever there are competitive commodity rates made in Vancouver or Victoria, we have given them an arbitrary of 5 cents over the Vancouver rate, and this arbitrary also applies in a great many cases to local commodity traffic such as mentioned by the Board of Trade of Victoria. So that when you come down to figuring out the actual amount of freight that has been collected from the people at Nanaimo on these alleged terminal rates, it has amounted to in one year, \$146.39.”

“Then about the mileage to Ladysmith. It is true that the Ladysmith transfer is closer to Nanaimo and the water distance is less to Ladysmith than it is to Esquimalt. Esquimalt, however, is a part and portion of Victoria, and the question of mileage distance on water-borne traffic, as the Board is quite well aware, is not a material one. When the rates were made under the Order of the Board, a through mileage tariff was compiled, and it was compiled via Esquimalt, the only terminal that this company actually owns, and could consider itself safe in basing its rates over. Had we based our rates over the Ladysmith transfer I do not think it would have made much difference, but at any

time we might have been ordered away from that transfer, we would only have had the Esquimalt transfer to operate, and consequently we would have had our rates based on the shorter water mileage via Ladysmith, but we would have been compelled to carry the traffic via Esquimalt. We based our rates via Esquimalt. But, as I contended before, it has not made any material difference to Ladysmith, considering the fact that with all this terminal business there have just been these few cars handled with a difference of \$146.39."

The complainants are of the view that the figures given by Mr. Lanigan from the books of the company do not show the total movement. They certainly do not show the movement in L.C.L. freight. In so far as the L.C.L. movement is concerned, the company claims that it would be insignificant. To the extent that the carload freight has been challenged, the company's figures have been verified. The company's figures showed only one carload of automobiles unloaded, while it was proved that four more were unloaded at Nanaimo. On investigating further, however, it developed that these cars were not from the Canadian Pacific Railway and had nothing to do with traffic on that line.

On the other hand, it is open to the complainants to say that had the freight basis to Nanaimo been more favourable, the quantity of goods delivered in Nanaimo through Ladysmith would have been much greater.

The movement of important commodities, such as flour, millfeed and oats, is provided by Tariff C.R.C. No. W-1995. This tariff covers the movement from the Prairie territory to Vancouver and other British Columbia points. This tariff is in no sense competitive with any water route, as although a competitive situation undoubtedly exists, that competition is merely railroad competition from Prairie points to British Columbia territory.

Under this tariff, Nanaimo takes exactly the same rate as Victoria, that rate being the rate to Vancouver plus $2\frac{1}{2}$ cents per 100 pounds.

While this is the case, the company's mileage tariff C.R.C. No. W-2214 differentiates on hay and other commodities between Nanaimo and Vancouver. The rates under this tariff again are built up on the Vancouver rate; and, as the tariff is a mileage tariff, the tariff charges are arrived at on the mileage basis provided in the tariff. Under this mileage basis, Victoria has a mileage of 90.7 miles, while Nanaimo pays on a mileage of 155.8 miles over Vancouver.

While on the one side it well may be that but little is involved, on the other it well may be that, if Nanaimo was placed on a better basis with the return of normal conditions after the war, it might be able to show that a good deal was involved—certainly enough, to warrant intervention.

There is some force in the company's contention that they do not own the facilities at Ladysmith and that they ought not to be compelled to issue tariffs for a movement via Ladysmith.

It well may be that in the absence of a movement it could not be ordered by the Board, and no tariff would be required.

As I see it, however, this contention does not here apply. The company from time to time had used Ladysmith. Ladysmith is a route open to the company and it still uses it. The company has considered all movements as by way of Esquimalt, and there is no tariff covering the Ladysmith movement except on the Esquimalt basis.

Obviously the Ladysmith movement is a movement which can be made with less cost, at least under certain conditions, to the company, where the movement is to Nanaimo and to stations in that district.

The statements filed show some greater difficulty having regard to tides at Ladysmith than at Esquimalt; but, on the other hand, the mileage to Ladysmith, as stated in the evidence, is but 45 miles (it appears from the Admiralty figures to be 48.3 miles), while the mileage to Esquimalt is 87 miles. It is, of course, perfectly true

that in comparatively short water hauls but very little attention can be given to the matter of mileage. Port costs and port delays are often the more important; and possible port delays consequent on the tide are shown to be considerably greater at Ladysmith than at Esquimalt.

I think that the parties would be treated justly by setting one situation off against the other, and treating Ladysmith and Esquimalt on the same basis.

As matters now stand, it is perfectly clear that the railway company has open to it two routes to Nanaimo—the one involving a shorter rail mileage, and, therefore, a more economical movement than the other. It is the duty of the company, under such circumstances, in the interests of the shipper, to take the shorter, more direct, and more economical movement; but, under the present tariff situation, the whole of the economy is obtained by the company.

Ladysmith's mileage given in the company's tariff is 141.7 miles from Vancouver. In my opinion, that mileage ought to be reduced to the Esquimalt mileage of 87, as long as the Ladysmith transfer can be used by the company. The mileages of stations which ought to be served by the Ladysmith Transfer rather than the Esquimalt Transfer, having regard to the shorter rail movement, should be reduced to a basis representing the Ladysmith mileage as reduced to 87 miles, plus the mileage from Ladysmith to destination. Under these circumstances, the mileage to Nanaimo will be reduced from 155.8 miles to 101 miles.

The main question in this case relates to the terminal rates. This question is covered by the judgment of Commissioner McLean.

In his judgment he sets out in detail Nanaimo's traffic, giving details of its traffic for the years 1910-14, covering not only foreign freight, but also coastwise traffic, although the coastwise tonnage cannot be said to affect the question of terminal rates.

The terminal rate, of course, represents the rate which is quoted from points in eastern territory where the movement is open by water to points in western territory which can be similarly reached by water, or where the distance from water through east or west is so short that the combination rail and water rate is lower than the regular railway tariff.

As pointed out by Mr. McLean's judgment, the railways may or may not meet water competition, or indeed competition of any form. It is a matter which is open for determination by the company. The company has the right either to attempt to get the business at small remuneration, or to elect to do without it altogether. The company's untrammelled right to meet or to disregard competition is, in my view, subject to this qualification, that, after having elected to meet competition at any point on its system in a district where similar operating and traffic conditions obtain, the competitive rate should be extended to such other points in the common district. This qualification is indicated in the Board's judgment made on an application for an order directing the Grand Trunk Railway Company to put into effect a through freight rate from Midland, Ont., to Cleveland, Ohio. File 27067.

Mr. McLean's judgment, however, points out that conditions are dissimilar. The water movement into Nanaimo is very small as compared to the water movement into Victoria.

No real reason has been disclosed why the company has cancelled the terminal rates into Nanaimo except that but little advantage had been taken of them. Under present conditions it is impossible to find undue discrimination in view of the actual traffic conditions. As the Nanaimo Board of Trade desires that the matter should be disposed of without further delay the application must be dismissed. This action, however, will not prejudice a further consideration of the application as and when traffic conditions may justify it.

OTTAWA, March 25, 1918.

Commissioner Goodeve concurred.

ORDER No. 27220.

In the matter of the complaint of the Board of Trade of Nanaimo, B.C., against the withdrawal of the Pacific Coast terminal rates to Nanaimo and the substitution of an arbitrary over the Vancouver rates; and the Order of the Board No. 24808, dated March 18, 1916, dismissing the complaint.

File No. 25926.

SATURDAY, the 18th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon rehearing the matter at the sittings of the Board held in Vancouver, June 26, 1916, the complainant and the Canadian Pacific Railway Company being represented at the hearing and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the complaint be, and it is hereby dismissed, with leave to the applicants to move for further consideration of the application as and when future traffic conditions may warrant.

H. L. DRAYTON,
Chief Commissioner.

Application for an Order of the Board requiring the Canadian Pacific Railway Company to publish specific commodity rates from Burritts, Ont., to various points.

File 1179-43.

JUDGMENT.

Mr. COMMISSIONER GOODEVE:

This application is made by the Provincial Stone and Supply Company of Toronto, Ont., for an order of the Board requiring the Canadian Pacific Railway Company to publish specific commodity rates on crushed stone from Burritts, Ont., to various surrounding points.

The applicants are the owners of some undeveloped quarry property adjoining the line of the Canadian Pacific Railway, about three-quarters of a mile east of Burritts station. The object of the applicants is to obtain a guarantee of such rates as, in their opinion, would justify them in investing the necessary capital to develop this property.

The applicants state that the rates quoted them by the Canadian Pacific Railway Company were altogether unreasonable and out of proportion to the rates charged elsewhere, and by other railroads. In support of their claim they quoted the special commodity rates on crushed stone, etc., in western Ontario, Mr. Boyle, on behalf of the applicants, and for the purpose of comparison, putting in exhibit No. 5, giving a list of points on the Michigan Central and Grand Trunk Railways showing the rates with distances from 9 miles to 171 miles. He also argued that it had been admitted by the Board that any quarry company is entitled to entry into a large market where the distance is not unreasonable, quoting, in support of his claim, *Doolittle & Wilcox v. Grand Trunk and Canadian Pacific Railway Companies*, 8 C.R.C., p. 10.

In looking up this case I find that the basis upon which this decision was made is found on page 13, which is as follows:—

“It strikes me as not unreasonable that the quarry near Toronto should enjoy the benefit of its natural location; but these nearby quarries have sub-

mitted for years to the establishment of these artificial rates by the companies, and without complaint have seen their outside competitors invest their capital and develop their industries; and it could hardly be regarded as fair that the short-haul quarry proprietors should, through the instrumentality of this Board, be enabled entirely to destroy their more distant brethren."

On that principle, and on the recommendations of the Chief Traffic Officer of the Board, the Chief Commissioner fixed a series of rates, applicable to Toronto from all the surrounding quarry points, which would enable the various competing companies to continue business on the same relative basis. The result of the fixing of these rates was to hold down the intermediate rates throughout this territory.

The Canadian Pacific Railway Company in its reply argued that similar conditions did not apply to territory outside of, or tributary to, Montreal, and that all the province of Quebec and eastern Ontario is on a regular mileage basis.

It is the policy of railway companies to establish rates lower than the general mileage scale for large shipments of stone moving to cities; and Mr. Flintoft, at p. 308, vol. 279, of the evidence, said: "We are willing to put Mr. Boyle on exactly the same basis and give him exactly the same advantages that they all have for the purpose of reaching the Montreal market, and as between local points to make that Montreal basis the maximum, that is to intermediate points."

The Canadian Pacific Railway Company submitted exhibit No. 3, giving a statement of crushed stone shipped from various stations in the province of Quebec for a period of six months from May 1 to November 1, 1917. This statement shows that out of a total of 826 cars shipped, 275, or one-third, moved on the mileage scale, while 551, or the remaining two-thirds, moved on the lower commodity rates.

The majority of the crushed stone movements are to points having a rate of \$1 per ton or less, and the Canadian Pacific Railway Company's statements show that 97.34 per cent of the movement was at such rates, while 72.70 per cent moved at rates of 70 cents per ton or lower.

There was no evidence to show, and in fact Mr. Boyle did not attempt to show, that the Toronto or intermediate rates in western Ontario were competitive as to the territory for which he was seeking these special rates. It was admitted by the Canadian Pacific Railway Company that these rates were lower than those in effect in eastern territory; but it has been frequently held by the Board that the mere fact of a rate being lower in one territory than another does not of itself prove undue discrimination.

To establish the special rates to the points asked for by Mr. Boyle would create a discrimination in his favour as against shippers forwarding one-third of the crushed stone business in the province of Quebec.

The rate of \$1.10 per ton said to have been quoted by the Canadian Pacific Railway Company for the distance, Burritts to Montreal, 121 miles, does not seem unreasonable when compared with a rate of \$1 per ton Terrebonne to Three Rivers, a distance of 72 miles, on which, according to the Canadian Pacific Railway Company's statement, 120 cars were moved.

The rate of 70 cents quoted to Ottawa for a distance of 34 miles compares favourably with the same rate from Terrebonne to Berthier, 36 miles, on which 39 cars of stone were moved. Thirty-five miles was the distance given by Mr. Boyle in his evidence as a characteristic haul in answer to Commissioner McLean, page 300.

I am of the opinion that the rate complained against has not been shown to be unreasonable *per se*.

In view, therefore, of the large movement of crushed stone under these rates, I do not think the Board would be justified in making the order asked for.

OTTAWA, April 10, 1918.

The Assistant Chief Commissioner and Mr. Commissioner McLean concurred.

ORDER No. 27204.

In the matter of the application of the Provincial Stone and Supply Company, Limited, of Toronto, hereinafter called the "applicant company," for an order directing the Canadian Pacific Railway Company to publish specific commodity rates from Burritts, Ont., to various points.

File No. 1179.43.

THURSDAY, the 9th day of May, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, February 15, 1918, in the presence of counsel for the applicant company and the railway company, and what was alleged, and upon the report and recommendation of the Traffic Officer of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

Application of the Quebec Railway, Light and Power Company, Limited, for an order permitting it to file tariffs providing for a general advance in tolls for the carriage of passengers over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File 28439.5.

JUDGMENT.

MR. COMMISSIONER McLEAN:

The Montmorency Division of the Quebec Railway, Light and Power Company is operated both by steam and by electricity. The steam operation is mainly as to the freight movement. Some of the passenger business, e.g., that of the carriage of pilgrims to Ste. Anne de Beaupré, is handled by steam traction.

The conditions as to steam handling of freight have been considered by the Board as being on all-fours with those involved in other steam railway traffic, and a 15 per cent increase in freight rates has been allowed and is effective.

While there is a carriage of passengers both by steam and by electricity, the bulk of the passenger business is by electricity. For the year ending June 30, 1917, there were carried by steam 81,650 passengers, with a revenue of \$8,608. The average haul per passenger was 7 miles, while the average receipts per passenger per mile were 1.4 cent. For the same period there were carried by electric operation 1,947,667 passengers, with a passenger revenue of \$212,643. The average fare was 10.5 cents; this is the same as the average steam fare. Detail as to the average haul by electric operation is not set out in the report form of the Department of Railways and Canals.

The section operated by electricity includes Quebec to St. Joachim, 26 miles, and Quebec to Kent House, 7 miles; a total of 33 miles.

The standard passenger rate is 2.5 cents per mile. Application is now made to increase passenger rates by 15 per cent.

The railway operates, in the section concerned, on its own right of way and has no agreements with any of the municipalities traversed which have any bearing on the level of passenger fares.

The increases in material costs show for the year 1917, as compared with the year 1913, a characteristic average increase of 40 per cent. In individual small items there are increases as high as 300 per cent.

The total labour costs, with a decreased number of employees, are \$20,000 higher in 1917 than in 1915, as indicated below:—

	Employees.	Wages.
1915..	203	\$33,869
1916..	230	35,638
1917..	182	53,807

The earnings for electric operation, as returned to the Department of Railways and Canals, are as follows:—

1914-1915.	
Gross revenue..	\$200,015 04
Operating expenses..	144,514 95
Net earnings from operation..	\$55,500 09
1915-1916.	
Gross revenue..	\$210,398 35
Operating expenses..	144,971 47
Net earnings from operation..	\$65,426 88
1916-1917.	
Gross revenue..	\$229,109 94
Operating expenses..	186,126 91
Net earnings from operation..	\$42,983 03

Included in the gross revenues are items covering mail, express, parlour cars, elevator (passenger), milk, excess baggage, special service train revenue, rent of land or buildings, stations and train privileges, parcel-room receipts, baggage storage, miscellaneous. As these items are not affected by the increase asked for, they should be deducted in order to appreciate the net result. For 1915, they equal 7 per cent of the total; for 1916, 10 per cent; and for 1917, 10 per cent.

The gross figures and the corrected figures, after making the above deductions, are as follows:—

	Gross Figures.	Corrected Figures.
1915..	\$200,015 04	\$185,499 81
1916..	210,398 35	188,477 10
1917..	229,109 94	205,340 95

War conditions have led to a falling off in passenger traffic. There has been a great reduction in the number of organized pilgrimages, especially since the United States entered the war. For the period July 1, 1917, to April 15, 1918, there were carried 1,471,931 passengers, as compared with 1,665,110 for the same period last year—a decrease of 193,179 passengers or a reduction of 12 per cent. Since the average fare per revenue passenger was in 1917 10½ cents, this would represent a reduction in revenue of \$20,283.79; and if continued at the same ratio will equal a reduction of \$27,557. This would equal 64 per cent of the net earnings from operation for 1916-17.

The earnings per car mile for a period of years show the following results:—

Year.	Gross per Car Mile.	Operating Expenses per Car Mile.	Balance.
1915..	0.468 cents.	0.338 cents.	0.130 cents.
1916..	0.475 "	0.327 "	0.148 "
1917..	0.483 "	0.393 "	0.090 "

There is nothing included in the above for interest on capital.

The stock and bond issue outstanding against this division is not subdivided as between steam and electric operation. There are outstanding \$2,500,000 of common

stock and \$750,000 of 7 per cent preferred stock. There are also \$2,500,000 of 5 per cent mortgage bonds, and \$25,670.40 of miscellaneous obligations, making a total debt obligation of \$2,525,670.40, against which there are interest charges of \$126,283.52.

In addition, the taxes against this division were: for 1915, \$5,566.53; 1916, \$5,566.53; and 1917, \$7,579.93.

Under the heading of expenditure for railway a total cost to June 30, 1917, is shown in the report of steam operation as \$3,134,909. This gives an average of \$71,361 per mile, which may be compared with the average amount, which, by extending the computation was held reasonable in the *London and Port Stanley Case*, viz., \$74,465 per mile. The statement of cost above given is for the 47.25 miles covered in the report of steam operation. If the same ratio applies to the 33 miles on which there is both steam and electric operation, the proportionate cost for this section would be \$2,455,634.

What is involved in the present application, however, is not whether an increase proportioned to stock and bonds outstanding is justifiable, whether at a nominal or at a corrected figure. Nor is there involved the question of an increase proportioned to a book value cost. What is involved is the question whether it is justifiable here to permit an increase of 15 per cent in existing rates.

There is involved a question of joint operation and costs which are not, in their entirety, capable of allocation. In the apportionment as between steam and electric operation on this division as reported to the Department of Railways and Canals, passenger revenue is divided in proportion to passengers carried. Freight revenue is directly allocated. Incidentally revenues which cannot be directly allocated either to steam or electric operation are divided according to actual number of passengers carried. Expenses, except where capable of direct allocation, are divided on the respective bases of gross revenue as allocated to steam and to electric operation.

The basis of computation as used in the *London and Port Stanley case* may fairly be taken as a test. On the basis of the 33 miles here involved this would give a total computed cost of \$2,021,976.

In applying this as a basis, it seems fair to apportion the cost as between steam and electric operation in proportion to the respective users as measured in the revenues received. To avoid the disturbing effects of the past year as affecting the average, the gross electric earnings for the period 1915-17 may be compared with the total gross earnings for the same period. This gives the gross electric earnings as 81.7 per cent of the total. The taxes, as already indicated, may be allocated on this basis. The following results as to net operating from operation are available:—

1914-15—

Net earnings from operation.. . . .	\$55,500 09
Allocated taxes (81.7%).. . . .	4,646 85
Net earnings from operation, less taxes.. . . .	\$50,853 24

1915-16—

Net earnings from operation.. . . .	\$65,426 88
Allocated taxes (81.7%).. . . .	4,646 85
Net earnings from operation, less taxes.. . . .	\$61,780 03

1916-17—

Net earnings from operation.. . . .	\$42,984 03
Allocated taxes (81.7%).. . . .	6,192 80
Net earnings from operation, less taxes.. . . .	\$36,791 23

Allocating the computed basis to the electric service on the same ratio, the result would be \$1,651,934. The net earnings from operation less taxes for 1917 are only 2.2 per cent on this.

Following the method made use of in the *London and Port Stanley Case*, a return over and above operating expenses and taxes, equal to \$124,393, might be expected. The net, less taxes, for 1917 falls \$87,603 below this.

Computations have already been given as to car-mile earnings and costs. What has been above set out may be extended in the same form. If the items of taxes and computed returns, as above indicated, are thus allocated, they would equal 28 cents per car mile; that is to say 19 cents more than the balance of 9 cents as shown.

The 15 per cent increase as asked for is justified. Subject to compliance with the statutory requirements as to publication in the *Canada Gazette* of the revised standards, tariffs may be filed effective within fifteen days from the date of the order.

May 3, 1918.

The CHIEF COMMISSIONER:

The case justifying the increase as allowed by Mr. Commissioner McLean has been made out.

ORDER No. 27208.

In the matter of the application of the Quebec Railway, Light and Power Company, Limited, hereinafter called the "applicant company" for an order permitting it to file tariffs providing for a general advance in the tolls for the carriage of passengers over its line in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439.5.

TUESDAY, the 7th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That the applicant company be, and it is hereby, authorized to publish and file tariffs increasing its passenger tolls 15 per cent to a maximum of 2.875 cents per mile; the said tariffs to be made effective after compliance by the company with section 331 of the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

Rules for Wires erected along or across Railways, adopted the 6th May, 1918.

General Order No. 231.

Section 4 of chapter 50 of the Statutes of 1910 is repealed, and the following is enacted as subsection 5 of section 246 of the principal Act:—

"10. An order of the Board shall not be required in cases in which wires or other conductors for the transmission of electrical energy are to be erected or maintained over or under a railway, or over or under wires or other conductors for the transmission of electrical energy with the consent of the railway company or the company owning or controlling such last mentioned wires or conductors in accordance with any general regulations, plans, or specifications adopted or approved by the Board for such purposes." 1-2 George V, chapter 22, section 7. Assented to 19th May, 1911.

GENERAL ORDER No. 231.

In the matter of section 246 of the Railway Act, as amended by chapter 37 of the Acts 7-8 George V, section 4, for the carrying of wires and cables along or across the tracks of railway companies under the jurisdiction of the Board.

Case No. 4704.

MONDAY, the 6th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Electrical Engineer of the Board,—

It is ordered:

1. That the conditions and specifications set forth in the schedule hereto annexed, under the heading, "Rules for Wires erected along or across Railways," be, and the same are hereby, adopted and confirmed as the conditions and specifications applicable to the erection, placing, or maintaining of electric lines, wires, or cables along or across all railways subject to the jurisdiction of the Board, part 1 being applicable where the line or lines, wire or wires, cable or cables, is or are carried along or over the railway; part 2 being applicable where the line or lines, wire or wires, cable or cables, is or are carried under the railway.

2. That any order of the Board granting leave to erect, place, or maintain any line or lines, wire or wires, cable or cables, along or across the railway and referring to "Rules for Wires erected along or across Railways," shall be deemed as intended to be a reference to the conditions and specifications set out in that part of the said schedule which is applicable to the mode of crossing authorized.

3. That any order of the Board granting leave to erect, place, or maintain any line or lines, wire or wires, cable or cables, along or across any railway subject to the jurisdiction of the Board, shall, unless otherwise expressed, be deemed to be an order for leave to erect, place and maintain the same according to the conditions and specifications set out in that part of the said schedule applicable thereto, which conditions and specifications shall be considered as embodied in any such order without specific reference thereto, subject, however, to such change or variation therein or thereof as shall be expressed in such order.

4. That the general order of the Board No. 113, dated November 5, 1913, approving of "Rules for wires crossing railways," and the conditions and specifications adopted thereby, be, and the same is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

SCHEDULE.

NOTICE TO APPLICANTS (SEE PAGE 2).

When the interested company's consent cannot be procured and an application to the Board becomes necessary, send to the Secretary of the Board (postage free) with the application, three copies of a sketch or drawing about 8 by 10 inches showing:—

(a) The location of the poles or towers, or the location of the underground conduit in relation to the track; the dimensions of the poles or towers; and the material or materials of which they are made.

(b) The proposed number of wires, or cables, the distance between them and the track, and the method of attaching the conductors to the insulators.

(c) The location of all other wires adjacent or to be crossed, and their supports.

(d) The maximum potential, in volts, between wires, the potential between wires and the ground, and the maximum current, in amperes, to be transmitted.

(e) The kinds and sizes of the wires or conductors in question.

(f) On circuits of 10,000 volts, or over, the method of protecting the conductors from arcs at the insulators.

(g) The number of insulators supporting the conductors. (*See also "J" in Specifications.*)

N.B.—Place a distinguishing name, number, date and signature upon the drawing. Mark the exact location of the lines or wires upon the drawing, by stating the distance in miles from the nearest railway station—N., E., S. or W.—so that this point can readily be identified.

STANDARD CONDITIONS AND SPECIFICATIONS FOR WIRE CROSSINGS.

PART I.—OVER-CROSSINGS.

Conditions.

1. The applicant shall, at its or his own expense, erect and place the lines, wires, cables, or conductors authorized to be placed along or across the said railway, and shall at all times, at its own expense, maintain the same in good order and condition and at the height shown on the drawing, and in accordance with the specifications hereinafter set forth, so that at no time shall any damage be caused to the company owning, operating or using the said railway, or to any person lawfully upon or using the same, and shall use all necessary and proper care and means to prevent any such lines, wires, cables, or conductors from sagging below the said height.

2. The applicant shall at all times wholly indemnify the company owning, operating, or using the said railway, of, from, and against all loss, cost, damage, and expense to which the said railway company may be put by reason of any damage or injury to persons or property caused by any of the said wires or cables or any works or appliances herein provided for not being erected in all respects in compliance with the terms and provisions of this order, as well as any damage or injury resulting from the imprudence, neglect, or want of skill of the employees or agents of the applicant.

3. No work shall at any time be done under the authority of this order in such a manner as to obstruct, delay or in any way interfere with the operation or safety of the trains or traffic of the said railway.

4. Where, in affecting any such line or wire construction, it is necessary to erect poles between the tracks of the railway, the applicant, before any work is begun, shall give the railway company owning, operating, or using the said railway at least seventy-

two hours' prior notice thereof in writing, and the said railway company shall be entitled to appoint an inspector, under whose supervision such work shall be done, and whose wages, at a rate not to exceed three dollars per day, shall be paid by the applicant. When the applicant is a municipality and the work is on a highway under its jurisdiction, the wages of the inspector shall be paid by the railway company.

4. (a) It shall not, however, be necessary for the applicant to give prior notice in writing to the railway company as above provided in regard to necessary work to be done in connection with the repair or maintenance of the lines or wires when such work becomes necessary through an unforeseen emergency.

5. Where the wires or cables are to be erected at the railway and carried above, below, or parallel with existing wires, either within the span or spans to be constructed at the railway or within the spans next thereto on either side, such additional precautions shall be taken by the applicant as the Engineer of the Board shall consider necessary.

6. Nothing in these conditions shall prejudice or detract from the right of the company owning, operating, or using the railway to adopt at any time the use of the electric or other motive power, and to place and maintain along, over, upon, or under its right of way, such poles, lines, wires, cables, pipes, conduits, and other fixtures and appliances as may be necessary or proper for such purpose. Liability for the cost of any removal, change in location or construction of the poles, lines, wires, cables or other fixtures or appliances erected by the applicant along, over or under the tracks of the said railway company, rendered necessary by any of the matters referred to in this paragraph, shall be fixed by the Board on the application of any party interested.

7. Any disputes, arising between the applicant and the said railway company as to the manner in which the said wires or cables are to be erected, placed or maintained, used or repaired, shall be referred to the engineer of the Board, whose decision shall be final.

8. The wires or cables of the applicant shall be erected, placed and maintained in accordance with the drawing approved by the Board and the specifications following. If the drawing and specifications differ the latter shall govern unless a specific statement to the contrary appears in the Order of the Board.

9. In every case in which the line of a railway company shall be constructed along or under the wires or cables of a telegraph or telephone company, the construction of the telegraph or telephone company shall be made to conform to the foregoing specifications, and any changes necessary to make it so conform shall be made by the telegraph or telephone company at the cost and expense of the railway company.

OVERHEAD LINES.

Specifications.

A. *Labelling of poles.*—Poles, towers, or other wire-supporting structures on each side of and adjacent to railway crossings, to be equipped with durable labels showing (a) the name of the company or individual owning or maintaining them, and (b) the maximum voltage between conductors; the characters upon the labels to be easily distinguished from the ground.

B. *Separate lines.*—Two or more separate lines for the transmission of electrical energy shall not be erected or maintained in the same vertical plane. The word "lines," as here used, to mean the combination of conductors and the latter's supporting poles, or towers and fittings.

C. *Location of poles, etc.*—Poles, towers, or other wire-supporting structures to be located generally a distance from the rail not less than equal to the length of the poles of structures used. Poles, towers, or other wire-supporting structures must

under no consideration be placed less than 12 feet from the rail of a main line, or less than 6 feet from the rail of a siding. At loading sidings sufficient space to be left for driveway.

D. Setting and strength of poles.—Poles less than 50 feet in length to be set not less than 6 feet and poles over 50 feet not less than 7 feet in solid ground. Poles with side strains to be reinforced with braces and guy wires. Poles to be at least 7 inches in diameter at the top—mountain cedar poles to be at least 8 inches at the top. In soft ground poles must be set as so to obtain the same amount of rigidity as would be obtained by the above specifications for setting poles in solid ground. When the line is located in a section of the country where grass or other fires might burn them, wooden poles to be covered with a layer of some satisfactory fire-resisting material, such as concrete at least two inches thick, extending from the butt of the pole for a distance of at least 5 feet above the level of the ground. Wooden structures to have a safety factor of five.

E. Setting and strength of other structures.—Towers or other structures to be firmly set upon stone, metal, concrete or pile footings or foundations. Metal and concrete structures to have a safety factor of 4.

F. Length of span.—Span must be as short as possible consistent with the rules of setting and locating of poles and towers.

G. Fittings of wooden poles for telegraph, telephone, or similar low tension lines.—The poles at each side of a railway must be fitted with double cross-arms, dimensions not less than 3 inches by 4 inches, each equipped with 1½-inch hardwood pins, nailed in arms, or some stronger support and with suitable insulators; cross-arms to be securely fastened to the pole in a girth by not less than a ½-inch bolt through the pole; arms carrying more than two wires or carrying cable must be braced by two stiff iron or substantial wood braces fastened to the arms by ½-inch or larger bolts, and to the pole by a ½-inch or larger bolt.

H. Fitting of all poles, towers, or other structures.—All wire-supporting structures to be equipped with fittings satisfactory to the Engineer of the Board.

I. Guards.—Where cross-arms are used, an iron hook guard to be placed on the ends of and securely bolted to each. The hooks shall be placed as to engage the wire in the event of the latter's detachment from the insulators.

J. Insulators.—All wires or conductors for the transmission of electrical energy along or across a railway to be supported by and securely attached to suitable insulators.

Wires or conductors in 10,000-volt (or higher) circuits, to be supported by insulators capable of withstanding tests of two and one-half times the maximum voltage to be employed under operating conditions. An affidavit describing the tests to which the insulators have been subjected and the apparatus employed in the tests shall be supplied by the applicant. The tests upon which reports are required are as follows:—

Ja. Puncture or rupture test.—The insulators having been immersed in water for a period of seven days, immediately preceding and ending at the time of the test, to be subject for a period of five minutes to a potential of two and one-half (2.5) times the maximum potential of the line upon which they are to be installed.

Jb. Flash-over test.—State the potentials that were employed to cause arcing or flashing across the surface of the insulator between the conductor and the insulator's point of support when the surface was (1) dry, and (2) wet.

K. Height of wires (a) Low tension conductors.—The lowest conductor must not be less than 25 feet from top of rail for spans up to 145 feet; 2½ feet additional clear-

ance of rails or other wires must be given for every 20 feet or fraction thereof additional length of span. The words "low tension," as here used, to mean conductors for telegraph, telephone, and kindred signal work, as well as conductors connected with grounded secondary circuits of transformers below 350 volts.

Kb. All primary conductors, underground secondaries and railway feeders to be maintained at least 30 feet above the top of rail—except where special provisions are made for trolley wires.

Kc. High tension conductors, those between which a potential of 10,000 volts or over is employed, to be maintained at least 35 feet above the top of rail.

L. *Clearance*.—Safe clearances between all conductors to be maintained at all times. The following distances to be provided wherever possible: at least 3 feet clearance from low tension wires; at least 5 feet between low tension wires, primaries, underground secondaries, and railway feeders employing less than 10,000 volts; at least 10 feet between high tension wires and all other lines.

M. *Guy wires*.—Guy wires at railway crossings to be at least as strong as 7 strand No. 16 Stub's or New British standard gauge galvanized steel wire, and to be clearly indicated as guy wire on the drawing accompanying the application. One or more strain insulators to be placed in all guy wires; the lowest strain insulator to be not less than 8 feet above the ground.

Na. *Wires and other conductors*.—Where open telephone, telegraph, signal or kindred low tension wires are strung across a railway this stretch to consist of copper wire, or copper-clad steel wire, not less than No. 13 New British standard gauge, .092 inch in diameter. Wire is to be securely tied to insulators by a tiewire not less than 20 inches in length and of the same diameter as the line wire.

Nb. Where No. 9 B.W.G., or larger, galvanized iron or steel wire is employed in a circuit, and where there is no danger of deterioration from smoke or other gases, the use of this wire may be continued at the crossing.

Nc. Where a number of rubber-covered wires are strung across a railway they may be made up into a cable by being twisted on each other or otherwise held together and the whole securely fastened to the poles.

Nd. Wires or other conductors for the transmission of electrical energy for purposes other than telegraph, telephone, or kindred low tension signal work, to be composed of at least seven strands of material having a combined tensile strength equivalent to or greater than No. 4 Brown & Sharpe gauge hard-drawn copper wire. These conductors to be maintained above low tension wires at the crossing, to be free from joints or splices, and to extend at least one full span of line beyond the poles or towers at each side of the railway.

Ne. Wires or other conductors subject to potentials of 10,000 volts or over, to be reinforced by clamps, servings, wrappings, or other protection at the insulators to the satisfaction of the Engineer of the Board.

Nf. Conductors for other than low tension work to have a factor of safety of two when covered with ice or sleet to a depth of 1 inch and subjected to a wind pressure of 8 pounds per square foot on the ice-covered diameter.

Ng. All conductors to be dead ended or so fastened to their supporting insulators at each side of the crossing that they cannot slip through their fastenings.

O. *Positions of wires*.—Wires or conductors of low potential to be erected and maintained below those of higher potential which may be attached to the same poles or towers.

P. Trolley wires.—Trolley wires at railway crossings to be provided with a trolley guard so arranged as to keep the trolley wheel or other rolling, sliding or scraping device in electrical contact. The trolley wire, trolley guard and their supports to be maintained at least 22 feet 6 inches above the top of the rails.

Q. Cable.—Cable to be carried on a suspension wire at least equivalent to seven strands of No. 13 Stub's or New British standard gauge galvanized steel wire. When cross-arms are used, suspension wires to be attached to a $\frac{3}{4}$ -inch iron or stronger hook, or when fastened to poles to a malleable iron or stronger messenger hanger bolted through the poles, the cable to be attached to the suspension wire by cable clips not more than 20 inches apart. Rubber insulated cables of less than $\frac{3}{4}$ -inch in diameter may be carried on a suspension wire of not less than seven strands of No. 16 Stub's or New British standard gauge galvanized steel wire. The word "cable" as here used, to mean a number of insulated conductors bound together.

PART II.—UNDERGROUND LINES.

Conditions.

1. The line or lines, wire or wires, shall be carried along or across the railway in accordance with the approved drawing, and a pipe or pipes, conduit or conduits, cable or cables shall, for the whole width of the right of way adjoining the highway, be laid at the depth called for by, and shall be constructed and maintained in accordance with the specifications hereinafter set forth.

2. All work in connection with the laying and maintaining of each pipe, conduit or cable and the continued supervision of the same shall be performed by, and all costs and expenses thereby incurred be borne and paid by the applicant; but no work shall at any time be done in such a manner as to obstruct, delay or in any way interfere with the operation or safety of the trains, traffic or other work on the said railway.

3. The applicant shall at all times maintain each pipe, conduit or cable in good order and condition, so that at no time shall any damage be caused to the property of the railway company or any of its tracks be obstructed, or the usefulness or safety of the same for railway purposes be impaired, or the full use and enjoyment thereof by the said railway company be in any way interfered with.

4. Before any work of laying, removing, or repairing any pipe, conduit or cable is begun, the applicant shall give to the railway company at least seventy-two hours prior notice thereof, in writing, accompanied by a plan and profile of the part of the railway to be affected, showing the proposed location of such pipe or conduit and works contemplated in connection therewith, and the said railway company shall be entitled to appoint an inspector to see that the applicant, in performing said work, complies, in all respects, with the terms and conditions of this order, and whose wages, at a rate not exceeding \$3 per day, shall be paid by the applicant. When the applicant is a municipality and the crossing is on a highway under its jurisdiction the wages of the inspector shall be paid by the railway company.

4a. It shall not, however, be necessary for the applicant to give prior notice in writing to the railway company, as above provided, in regard to necessary work to be done in connection with the repair or maintenance of the line when such work becomes necessary through an unforeseen emergency.

5. The applicant shall, at all times, wholly indemnify the company owning, operating, or using the said railway of, from and against all loss, costs, damage and expense to which the said railway company may be put by reason of any damage or injury to person or property caused by any pipe, conduit, or cable, any works or appliances herein, or in the order authorizing the work provided for, not being laid and con-

structed in all respects in compliance with the terms and provisions of these conditions, or if, when so constructed and laid, not being at all times maintained and kept in good order and condition and in accordance with the terms and provisions of said order, for any order or orders of the Board in relation thereto, as well as any damage or injury resulting from the imprudence, neglect, or want of skill of any of the employees or agents of the applicant.

6. Nothing in these conditions shall prejudice or detract from the right of any company owning or operating or using the said railway to adopt, at any time, the use of the electric or other motive power, and to place and maintain upon, over, and under the said right of way such poles, wires, pipes and other fixtures and appliances as may be necessary or proper for such purposes. Liability of the cost of any removal, change in location or construction of the pipes, conduits, wires, or cables constructed or laid by the applicant rendered necessary by any of the matters referred to in this paragraph, shall be fixed by the Board on the application of the party interested.

7. Any dispute arising between the applicant and the company owning, using or operating said railway as to the manner in which any pipe or conduit, or any works or appliances herein provided for, are being laid, maintained, renewed, or repaired, shall be referred to the Engineer of the Board, whose decision shall be final and binding on all parties.

UNDERGROUND LINES.

Specifications.

AA. *Conduit*.—Vitrified clay, creosoted wood, metal pipe, armoured cable or fibre conduit may be used.

BB. *Depth*.—The excavation to be of sufficient depth to allow the top of the duct to be at least three feet below the bottom of the ties of railway track.

CC. *Laying*.—The conduit or duct to be laid on a base of 3 inches of concrete, mixed in proportion, 1 of cement, 3 of sand and 5 of broken stone or gravel. Where stone is used, such stone is to be of a size that will permit of its passing through a 1-inch ring. After ducts are laid, the whole to be encased to a thickness of 3 inches on top and sides in concrete mixed in the same proportion as above.

Where the track is on an embankment a pipe may be driven through the latter.

DD. *Filling in*.—The excavation must be filled in slowly and well tamped on top and side.

EE. *Guard*.—The excavation must at all times be safely protected by the applicant.

Complaint of the Grain Growers' British Columbia Agency, Limited.

File No. 27840.19.

JUDGMENT.

The CHIEF COMMISSIONER:

A ruling has been asked as to the right of the railway companies to advance their rates on wheat under the judgment and orders issued in the 15 per cent case. The question was governed entirely by the orders already issued.

In the main judgment rates on grain in western territory were held down to a maximum advance of two cents a hundred pounds; a special application was made on behalf of those interested in the grain business in the West, asking that the

increased rates should not be put in until the movement of last year's crop to Fort William had been completed. The judgment giving effect to the application reads:—

“Wheat buyers and country elevators are not permitted to carry on business in the ordinary course in so far as wheat is concerned. They are compelled by order of the Board of Grain Supervisors for Canada to purchase wheat at a specific price. They are also compelled by the same Board to sell wheat at a specific price.

“Mr. Fowler's figures, which were not disputed by the railways, show that the Board of Grain Supervisors has held these grain buyers down to a price which will certainly permit of no excessive or unreasonable profit, but will possibly result in some loss, certainly in loss having regard to the activities of the buyers, in so far as wheat itself is concerned.

“In view of the artificial position, therefore, of wheat, brought about by legislation doubtless necessary in view of war conditions, and in view of the position in which wheat purchasers have been placed, I am of opinion that the increase allowed for the carriage of wheat ought not now to be made effective. I would postpone the effective date of rate increases for the transportation of this commodity until the 1st day of June next. This will enable all wheat purchased at the old rate and subject to the old conditions to be hauled to Fort William before the new rates take effect.

“The like conditions do not apply to coarse grains, nor indeed to any grain other than wheat. In my opinion, the effective date of the judgment ought not to be postponed having regard to these commodities.”

General Order No. 212 was issued carrying this judgment into effect. Under the judgment, while the rate increases allowed on other traffic were authorized to become effective not earlier than February 1, the order contains the following provision having regard to the movement of wheat:—

“And it is further ordered: That the rates authorized by the judgment to be charged on wheat, in carloads, to Port Arthur and Fort William only, may be made effective not earlier than June 1, 1918.”

The situation is entirely a tariff one; appropriate tariffs have been published by the companies providing for increases of the wheat rates, apart from the specific movement that was brought to the attention of the Board as requiring a postponement, namely, the movement of wheat in carloads to Port Arthur and Fort William.

The movement of wheat, therefore, from prairie points to the Pacific coast is subject to the increase allowed in the main judgment.

May 8, 1918.

The Assistant Chief Commissioner and Commissioners McLean, Goodeve and Boyce concurred.

Complaint of the Lake Superior Paper Company and the Spanish River Pulp and Paper Mills, of Sault Ste. Marie, Ont., that the Canadian Pacific Railway Company's Special Tariff on wood-pulp, C.R.C. No. E-3357, effective January 10, 1918, in so far as rates from Sturgeon Falls and Espanola to destinations in Ohio, Indiana, Michigan, Illinois, and the western portions of Pennsylvania and the state of New York are concerned, fails to preserve the pre-existing relationship with respect to the rate from Ottawa to the same territory.

File 26901.

Heard at Ottawa, March 19, 1918.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

The complainants allege that the Canadian Pacific Railway Special Tariff on wood-pulp C.R.C. E-3357, effective January 10, 1918, is, as regards rates from Sturgeon Falls and Espanola (where complainant's mills are situated) to points in Central Freight Association territory (the destination of their products), relatively unjust, unreasonable, discriminatory and unduly prejudicial in favour of the complainants competitors and that such rates fail to preserve the relationship theretofore and for a number of years existing as regards such shipments, and which tariff the complainants ask to be restored.

The point in the case on which complainants rely is that they should, as regards shipments from their Sturgeon Falls and Espanola mills to points in Central Freight Association territory enjoy the same tariff as that enjoyed by their competitors in the Ottawa group; that is, that the complainants were entitled to continue to enjoy as, before the tariff complained of was effective they had enjoyed, the Ottawa rate from their mills to points within the Central Freight Association territory. A former tariff under which complainants were blanketed was Canadian Pacific Railway Tariff C.R.C. E-3129, which was with other tariffs suspended by order of the Board No. 24915, dated April 22, 1916, pending consideration by the Board as to the rates involved and the extent of the blanket territory.

Upon that investigation, Mr. Hardwell, the Chief Traffic Officer of the Board, prepared a report, dated August 7, 1917, which was adopted as the judgment of the Board, and Order No. 26547, dated September 20, 1917, issued adopting the changes recommended in Mr. Hardwell's report.

It is now contended by counsel for the Canadian Pacific Railway Company that the effect of the order based upon the above-mentioned report was, by reducing the Ottawa group rate, to take Ottawa, Hull, Hawkesbury and Buckingham from the territorial shipping blanket theretofore established, without affecting the rates from Sturgeon Falls and Espanola, and Mr. Flintoft argued that the effect of the judgment was, so far as Central Freight Association territory was concerned, that Espanola, Sturgeon Falls, Grandmere, and Shawinigan Falls were left on a common basis to enable them to compete on an equality in that market.

Such being the substance of the dispute, the intention and meaning of the prior order of the Board founded on Mr. Hardwell's report must be the deciding factor as to whether the increased tariff imposed upon complainants should be allowed; and it is, in the issue raised, not necessary to deal with the other factors, such as comparative distances of the various destination points in Central Freight Association territory, details of which were filed at the hearing.

As much turned upon the construction to be placed upon the previous judgment adopting Mr. Hardwell's report upon the whole situation as regards commodity rates on wood-pulp, and Mr. Hardwell was not present at the hearing, I incorporate his memorandum, dated May 4, 1918, which very clearly and satisfactorily, in my opinion,

disposes of the matters in dispute and clearly exemplifies the construction to be placed upon the Order 26547:—

“The complaints are that the pre-existing relationship between the international rates on wood-pulp from Ottawa on the one hand and Sturgeon Falls and Espanola on the other has been disturbed by the tariff issued by the Canadian Pacific following the Board's Order No. 26547 of September 20, 1917: Tariff No. E-3357, effective January 10, 1918.

“The railway company contends in effect that the result of the order, read in connection with my report which was concurred in and adopted by the Board as its judgment, was, by reducing the Ottawa rates, to remove Ottawa, Hull, Hawkesbury and Buckingham from the territorial shipping blanket without affecting the rates from Sturgeon Falls and Espanola. Such, however, was not the intention. It was assumed, though incorrectly judged by the result, that the company would, without definite direction, continue the Ottawa rates from Sturgeon Falls and Espanola to those destinations which for years back had the benefit of the Ottawa rates over the same routes as from Ottawa.

“Both the report and the order dealt with destinations in Central Freight Association territory. It is mentioned in the report that Sturgeon Falls and Espanola had the same rate advantages to places west of Chicago by reason of the shorter route through the Soo. To a lesser degree the new tariff continues these advantages.

“Mr. Flintoft quoted the description of the shipping territory from the second page of the typewritten report; but it is clear, to me at any rate, that the description was merely an introductory statement of the situation as it then existed. Mr. Flintoft's contention, at p. 438 of the proceedings, that I had evidently arrived at the conclusion that as far as Central Freight Association territory was concerned, Espanola, Sturgeon Falls, Grand Mère and Shawinigan Falls should be left on a common basis to enable them to compete on an equality in that market is, in my opinion, untenable. Such a conclusion would mean that with the rates reduced from the intervening points, namely, Ottawa, Hull, Hawkesbury, and Buckingham, the rates from Sturgeon Falls, for instance, 268 miles west of Ottawa, should be the same as from Grand Mère, 183 miles east of Ottawa; or put another way, 524 miles as against 695 miles to Detroit.

“Mr. O'Brien puts the matter correctly where (p. 447), referring to my report he says: ‘He seemed to have more in mind establishing a basis between the Quebec mills and Ottawa. He did not say that the relationship between Sturgeon Falls and Espanola and Ottawa should be changed.’

“Except when denoted as modified by competition, Sturgeon Falls and Espanola for some years past have had the same rates as Ottawa to destinations in Central Freight Association territory, and it is my opinion that the present Ottawa rates ought not to be exceeded to destinations which under the tariff are reached from Sturgeon Falls and Espanola through the same frontier gateways as from Ottawa.”

Having, in my opinion, failed to justify the construction it has placed upon the judgment, the railway companies should be required to restore the pre-existing relationship by publishing and filing the same rates from Sturgeon Falls and Espanola as are concurrently in effect from Ottawa through the same frontier gateways to destinations in Central Freight Association territory.

OTTAWA, May 10, 1918.

The Chief Commissioner and the Assistant Chief Commissioner concurred.

Interswitching Service.

File No. 6713. Case 2846.

JUDGMENT.

The CHIEF COMMISSIONER:

Many complaints have from time to time been made both by the railways and by shippers as to the interswitching rules and service as now practised by the railways. The general issue is one of long standing and is probably, indeed, one which will never be finally determined.

Many hearings have been had at which isolated cases have been considered, as well as hearings at which the whole general situation has been discussed fully by various shipping associations, individual shippers, and the railways.

The Board has for some time had the matter under revisal, in an endeavour to make an order of general application covering the whole question. A short review of interswitching practices is necessary.

It should be stated *imprimis* that an interswitching service is of value to the public; it is not only a convenience, but works economy and expedition in transportation. By it the traffic of the carrier originating and hauling it to its destination is delivered to the consignee who is located on the tracks of another railway within the same terminal or group of terminals, or having been loaded on the sidings of one carrier is by it transferred locally to the railway over which it is to be taken to its destination.

From the evidence it appears that interswitching was first carried on, at least to any extent, in Toronto. There, the Canadian Pacific had sidings tributary to its tracks to the north and west of the city, and the Grand Trunk had sidings adjacent to its tracks along the Esplanade to the south. Each company was desirous of obtaining access to the sidings of the other, so that the interests of both were reciprocal.

The first action taken by the Board was on the application of the Canadian Pacific Railway Company for an order directing the Grand Trunk Railway Company to afford proper facilities for the interchange of traffic between the companies in London, Ont.

Order No. 605 was subsequently issued, dated July 25, 1905.

Under this Order, the Grand Trunk was directed to afford reasonable and proper facilities for the interchange of freight and live-stock traffic, and the empty cars incidental thereto, between its lines and those of the Canadian Pacific, in both directions, as well as between the lines of the Canadian Pacific and those of other companies connected with the Grand Trunk. The order also contained the following provisions:—

“4. That all other devices, such as free or assisted cartage, or cartage allowances, intended to equalize the facilities of the respective railways of the applicant company and the Grand Trunk, for the collection and delivery of freight at or near London, except the customary system of cartage published in the freight tariffs of the respective railways, be, and the same are hereby prohibited.

“5. That all preference, prejudice, and discrimination in such cartage system, be, and the same are hereby, prohibited.”

The cartage system still allowed under the above prohibition was merely the cartage incidental to the collection and delivery of merchandise in the higher classes of the freight classification, commonly referred to as cartage freight, to and from the freight warehouses or team tracks. This has since been discontinued.

The question was next dealt with under the order of the Board No. 4988, dated July 8, 1908, since changed to general order No. 11.

This order is known as the “General Interswitching Order.” It allows contracting or line-haul carriers to absorb the toll charged for the interswitching of competitive traffic. It provides a tariff applicable to traffic destined to consignees located

upon or reasonably convenient to the tracks of the contracting carrier, or to consignees who have customarily accepted the contracting carrier's delivery, for which, after it has been shipped, the consignee requires an interswitching delivery involving an additional service. The rate allowed was 20 cents a ton for any distance not exceeding four miles, with a minimum per car of \$3 and a maximum of \$8.

In the case of traffic destined to consignees located upon or reasonably convenient to tracks other than those of the contracting carrier, the order provides that one-half the toll shall be paid by the contracting carrier; the principle being that, in the first case, the consignment being made in the ordinary course for the line-haul carrier's delivery, the interswitching service subsequently required is attended with more cost, and being an added service apart from the original contract the consignee should be at the whole cost of the movement; while in the second case it was thought just that the carrier enjoying the benefit of the line haul, and so escaping the terminal charges, should, as its contribution to the joint movement, absorb one-half of the necessary and incidental switching charges.

The order further provides that the interswitching service at the charge provided should be restricted to a distance of four miles to or from the nearest point of interchange.

It is not now necessary to refer to the other clauses of the order, except clause 11, which reads as follows:—

“11. All and every arrangement, or device, such as free or assisted cartage, cartage allowances, or the like, intended to equalize the facilities of competing companies at common points, except such as are lawfully published in the freight tariffs of the Companies, are hereby prohibited.”

The question was next considered by the Board in an application of the Canadian Pacific Railway Company for an order rescinding the original order made by the Board and applicable as it was only to the London case.

The grounds of the application and its object are well set out in the considered judgment of the late Chief Commissioner, the Honourable Mr. Justice Mabee, delivered November 27, 1911. The judgment reads:—

“The ground upon which the application is based is that, on July 8, 1908, effective September 1, 1908, the Board, by its General Interswitching Order, established certain tolls for interswitching generally within certain limits. The tolls that would be payable by the Canadian Pacific Railway Company to the Grand Trunk Railway Company for interswitching at London would be less under the general order than those payable under the special order of July 25, 1905.

“It may as well be said at the outset that, when the investigation was being held that led up to the making of the general order, the London situation was not present to my mind, and it was not intended that the order covering interswitching there should be interfered with by the general order. The Companies have so regarded the matter. Hence this application for rescission of the London order, which would leave the general order applicable.

“On June 22, 1904, the Grand Trunk Railway Company applied for approval of its plan for the construction of this track connecting the lines of of the two companies. An order was made on July 6, authorizing the work. At about the same time, the Canadian Pacific Railway Company applied for leave to construct a small piece of track to complete the connection, and the correspondence upon the file shows that Mr. Drinkwater was contending that the order should be made for the interchange of traffic and for the inter-switching of loaded and empty cars to and from all of the industrial sidings, team track sidings, and business sidings generally, which are or may be hereafter constructed upon the line of the C.P.R., the G.T.R and such other rail-

ways as may directly or indirectly connect therewith. In September, Mr. Drinkwater wrote to the Board that 'it has been impossible to come to a satisfactory agreement with the Grand Trunk as to the switching charges to be established at this point, and it will be necessary for the Board, to deal with this feature of the matter.'

"Up to the 4th of October, 1904, the form of order had not been settled, and on that day Mr. Biggar forwarded to the Board the draft, with the words 'sidings and team track sidings' struck out, leaving the order to cover all industrial and business sidings only. The order, although dated July 6, was apparently not signed or issued until October 5, and went out in the form contended for by the Grand Trunk Railway Company, viz.: 'For the interchange of traffic and for the interswitching of loaded and empty cars to and from all of the industrial and business sidings generally, etc.' On November 23, 1904, Mr. Drinkwater wrote again to the Board stating that the branch had been constructed, but that no understanding could be come to by the railway companies in respect to the amount to be charged by the Grand Trunk Railway Company for switching services; and he applied for an amendment of the order of July 6 by adding a clause fixing the tolls to be charged. On January 24, 1905, Mr. Drinkwater wrote stating that a difference of opinion had arisen between the officers of his company and those of the Grand Trunk Railway Company as to whether the order of July 6 applied to interchange of traffic from and to 'team tracks,' and if that order as framed did not cover team tracks, it was the intention of his Company to ask that it should be amended to include such tracks.

"On April 18, the city of London applied for an order requiring the Grand Trunk Railway Company to finish construction of this branch within a time to be fixed by the Board, and for an order for the *proper* interchange of traffic at London.

"On May 1, 1905, the Canadian Pacific Railway Company applied for an order fixing the amount to be charged for interchange of traffic and interswitching of cars over this branch. There are many communications upon the file, some from the London City Council demanding 'absolute and complete interswitching,' whatever that may mean; and after a long inquiry, hearing and argument, the order was made that appears in VI, Canadian Ry. Cas., at page 334, the case having gone to the Supreme Court, where that order was affirmed. This order fixed the tolls; and it is to be presumed all special circumstances were taken into consideration by the Board in arriving at the sums authorized. In the reasons for judgment, the late Chief Commissioner says: 'It has also been urged, on behalf of the Grand Trunk Railway Company, that the Board should deal with this question of the division of such rates or allowance of charges for interswitching in a general way, and by reference to all the points in Canada where the railways of these two companies connect. It does not appear to me that this can properly be done. I think in each case the nature and value of the services to be rendered, and the facilities to be used, must be taken into consideration.'

"It is clear that, in fixing the interswitching tolls at London, the services to be rendered and the facilities to be used' were fully and carefully considered, and the tolls or charges were fixed upon that basis. It is true that the general interswitching order intended to establish uniformity of charges for these services; but it seems to me that this London order gives to the Canadian Pacific Railway Company a user of the terminals of the Grand Trunk Railway Company at London that a company would not be entitled to under the general order. It places at the disposal of the Canadian Pacific Railway Company every track of the Grand Trunk Railway Company in London, except 'shed-tracks'; and I do not understand the general order to carry with it any such rights.

"The order that was made on July 25, 1905, was much broader in its scope than the order of July 6, 1904. It gave the Canadian Pacific Railway Company greater rights of user of Grand Trunk Railway Company's terminals and facilities. It was made upon the application of the Canadian Pacific Railway Company, pressed, as the record shows, with much persistency; and as the latter company is enjoying under that order greater facilities than it would be entitled to under the general order, I see no reason why it should not continue to pay the charges provided for in the order in question."

It will be observed that the learned late Chief Commissioner distinguishes absolutely between railway sidings and team tracks on the one hand, and industrial or business spurs on the other. The issue may perhaps be expressed more clearly if it is said that the distinction made rests in the fact that, in the first instance, the railway company's own terminal facilities are used for the purpose of loading or unloading the traffic while, on the other hand, private sidings connected with the railway tracks proper, but of themselves apart entirely from the railway's terminal facilities, are used.

From the evidence, however, I find that the companies at the time made no attempt to enforce the principles of this judgment, or to confine interswitching solely to business and industrial spurs, the probable reason being that it was in the interests of the companies themselves to reach, not only the sidings adjacent, but also the team tracks of each other, and that it was, therefore, in their interests to continue to extend interswitching practices to team tracks.

The matter next came up objectively on a complaint made by Mr. Shaw, General Traffic Manager of the Canadian Northern Railway Company, received by the Board on February 2, 1912. The complaint reads as follows:—

"On the 20th ultimo, the Grand Trunk Company at Toronto issued 'peremptory orders refusing to accept for team track delivery in their Toronto yards, carload freight arriving in Toronto over the Canadian Northern Ontario line, which for convenience the owners desire delivered upon the team tracks of the Grand Trunk Company here.

"This peremptory order was withdrawn and subsequently renewed January 29.

"Previous to the order No. 4988 of the Board, carload freight received at Toronto over the Canadian Northern Ontario was accepted for team track delivery by the Grand Trunk Company, and subsequent to the issue of the above order the carriers generally throughout Canada interpreted subsection 4 of the general order as compelling instructions for the transfer to a connecting carrier of carload freight for delivery on the team tracks of such connecting carriers, if such delivery was more convenient than upon the team tracks of the carrier lines, and the order has been so construed by lines operating in Canada, west of Port Arthur.

"The judgment issued by the chairman in the application of the Canadian Pacific Railway interswitching at London, order 15526, has raised a doubt in the minds of the carriers as to the obligation of a switching line to provide team track facilities when for the convenience of the owner such is desired.

"I shall be much obliged if you will advise me, on receipt of this letter, if we are required under the general order to accept from a connecting carrier carload freight when, for the convenience of the owner, team track delivery within our yard limits, as defined by the General Order, is obligatory or not."

The question was considered by the late Chief Commissioner and Mr. Commissioner McLean, and directions were given that the Secretary should advise Mr. Shaw that the interswitching order dealt only with the tolls payable, and was never intended to compel one railway to turn over its entire terminals to another, or others.

Again, notwithstanding this intimation from the Board, the companies still, at least in many instances, allowed the use of their team tracks for interswitching service.

It should be noted that, although accompanied by no written reasons, specific orders of interchange, similar to that given in the London case, were made by the Board applicable at Lindsay, Ont., New Westminster, B.C., and Rossland, B.C.

The position, therefore, as defined by the judgment and directions that I have referred to, is that mandatory orders are applicable at the specific points mentioned, and that the order providing for the general interswitching service does not cover the same facilities as in the London case, the London order covering team tracks, while the general order subsequently made, did not.

Beyond all question team tracks form part of the railway's terminals. Instances in which the companies have refused to throw their team tracks open to the inter-switching service are becoming more numerous. It would appear that the underlying reason is that the Canadian Northern is now operating in the eastern part of Canada and, speaking generally, it is without proper terminal facilities. The other companies object to allowing the company with which they are in competition to carry on business at their expense. They point out that their terminals have cost them a very large sum of money; that they are not at all properly compensated for the interswitching service, and that they get no compensation whatever for the use of their valuable terminals in cases where interswitching involved the use of these terminals.

It is but fair to say that the terminals constitute a large part of the railway company's investment. They are very vital to the system, and without proper terminals no business can be satisfactorily carried on. The cost of the Canadian Pacific's terminals in Montreal, for example, has been estimated at a sum considerably greater than the cost of its new line from Glen Tay to Agincourt, a distance of 184 miles.

It is further pointed out that over and above the question of property rights of companies owning proper and sufficient terminals is that of public interest, in that no company will make any investment not absolutely required for the necessities of its own business of the time, if it is always subject to the peril of having such facilities taken over for the use of a competing line making no similar investment.

On the other hand, the public interest in interswitching, perhaps not as in the past ordered, except at London and other specific points, but as actually afforded by the companies in the past at many points, is a question of vital concern.

As matters now stand, the companies may charge their full tariff rates for the distance comprised in interswitch movements for team track deliveries. The principal effect of this is to form an embargo, and to shut off the movements of freight against the interests of at least certain portions of the territory served by Canadian railways.

I am of opinion that interswitching should be no longer carried on as a matter of grace, but as a matter of right. The general order ought not to be merely a tariff but an order which provides for and compels the service to be given. I think that carriers should be compelled at all times, according to their powers, to furnish an interswitching service, equal to the service accorded their own traffic, at all points where interchange tracks are now installed or may hereafter be provided, and that the line carrier, when required by the shipper or consignee, should be compelled to place cars at the proper point of interchange and to requisition the service of the inter-switching carrier, or carriers.

The question of the intermediary carrier appears not yet to have been covered by any order of the Board, except in the Brandon case. The service demanded of an intermediary carrier does not include the use of terminal facilities as such; and I think that the present charges being a toll of \$3 for distances up to 3 miles, and a toll of \$3.50 a car, irrespective of weight or loading, for any distance not exceeding four miles, is fair and sufficient. This charge must include the return of the empty car.

Some proper distinction, however, should be made as between the use of team tracks and private sidings.

The interswitching toll of one cent per 100 pounds, in so far as the private sidings are concerned, I think is sufficient, notwithstanding the representations as to increased costs which have been made; but the former maximum charge should be eliminated.

This former maximum was \$8 a car. Since it was made the weight-carrying capacity of cars has greatly increased. In order to earn \$8 at the rate reserved, 80,000 pounds had to be carried before the maximum was reached, and this weight at the time of the former order would, speaking generally, in any event have constituted a maximum loading. To-day we have cars constructed to carry 100,000 pounds and upwards. There is no reason why greater weights should be carried at the same cost. The maximum should be struck out.

I would, however, give effect to the admitted increased cost of service to the limited extent of changing the minimum rate from \$3 to \$5 a car for certain classes of commodities. There are other commodities on which such a rate, however, would constitute an entirely disproportionate burden on the traffic. In my view, the present minimum rate of \$3 a car ought to be continued applicable to all traffic included in the seventh, eighth and tenth classes of the Canadian Freight Classification.

It frequently happens that the tracks leading to or from grist and flour mills, grain elevators, coal and lumber yards and other industries are on railway property, although in fact practically private sidings and used for the business of the mill, elevator, or other such industries, as the case may be. In my view, therefore, sidings used by the railway for spotting cars thereon to be loaded or unloaded by any industries abutting on such sidings directly from or to such abutting property ought, for the purpose of this Judgment, to be considered as private sidings, irrespective of the fact that the track is built on railway land. It is not, of course, intended by this Judgment to change the legal status of such sidings, but merely to provide that they are entitled to interswitching on the same basis as private sidings.

The duty of the line carrier to absorb one-half of the terminal carrier's charge for interswitching to or from private or industrial sidings as so defined ought to be continued, subject, however, to a minimum gross earning to the line carrier of \$12 a car.

I now deal with the question of team tracks. I am of the opinion that the service ought to extend to these tracks subject to two considerations. First, that in time of congestion the railway company owning the terminal facilities not only has the right, but is subject to the duty of first looking after the placing of cars containing traffic originating on its line. The statutory duty of a carrier is to provide facilities for its own traffic rather than the traffic of another carrier, and this duty under the Act is paramount. Second, that a fair basis of remuneration should be allowed the company for the use of its property.

In this case, I think that the rate should be doubled, and would allow the terminal carrier 2 cents per 100 pounds for the actual weight carried, subject to the minimum weight of the line carrier's tariff, with a minimum of \$6 per car.

On the question of the absorption of a portion of this rate the issue is somewhat different. In the case of private sidings already discussed the consignee is held down to delivery at that point. While he has an advantage in getting such delivery, it is an advantage, speaking generally, for which he has paid, and taking delivery, as he does, on his own siding he is relieving the railway terminals of the burden of looking after his business.

The question is quite different in the case of team track deliveries. With two sets of railway terminals in town, the interswitching service from one set of terminals to the other would be demanded by the consignee merely for the purpose of saving in his teaming costs. Team he must in any event, and the selection of one terminal as against the other is entirely a question of the shorter, better, and more convenient haul. Under such circumstances the line carrier ought not to be compelled to absorb any greater portion of the terminal carrier's charges than in the case of a private siding delivery.

It may be said that in view of the fact that interswitching to team tracks will in the great majority of cases be resorted to only by the consignee when he thereby obtains

a saving of cost in cartage, the line carrier ought not to be called upon to absorb any of the cost.

Considering the situation from the standpoint of the consignee alone, this might well be the result. In my opinion, however, the matter cannot so be regarded. The position of the line carrier must also be considered. When its freight is interswitched for loading on the team tracks of another line, its own team tracks are relieved of that service, just as much as if the movement had been to a private siding situate on another line.

At periods of terminal congestion, the resultant benefit to the line carrier is beyond doubt. Furthermore, cases have occurred more than once when an interswitching movement to the team tracks of a terminal carrier was not desired merely for the convenience of the consignee, but because the line carrier had not sufficient facilities in the terminal to enable its traffic to be unloaded with proper despatch.

I would, therefore, subject the line carrier to the same absorption for interswitching to the terminal carrier's team tracks as in the case of private sidings, rather than throw open the team tracks of the terminal carrier without cost to the line carrier.

These charges ought to cover the accessory interswitching movement of the empty car in every case.

The only justification for subjecting the facilities of one company to the business of the other is that of public interest and convenience. Such a course cannot be justified in any case where public interest does not demand and require it. In the absence of joint tariffs interswitching becomes necessary and is in the public interest where the facilities exist and the use of two lines is of necessity required. The whole question was gone into very carefully by the late Chief Commissioner, Mr. Justice Killam, who very properly, if I may say so, approached it from the standpoint of public necessity, and treated, in effect, the interswitching service as a joint movement. The duty of the railway companies to make joint rates and to see that traffic is carried on a continuous route where two or more railways are concerned in it, is the underlying principle of his order in the London case. His judgment deals with the purposes of the Act as follows:—

“The provisions of the Railway Act which require railway companies to interchange traffic at connecting points are introduced, not for the purpose of benefiting one railway company at the expense of another, but solely in the interests of the public.”

Where a single line of railway, direct and convenient, is open to traffic, there is, of course, no duty thrown on railway companies under the Act to make joint rates. On the other hand, joint rates in such a case are not for but against public interest, as the service incident to the work performed and the costs are greater than for the single-line haul.

In throwing open the terminal tracks of one company for the business of another, as is now proposed, these underlying principles must not be lost sight of. The order of the Board should not be used for the purpose of enabling one company to take from another company, not only the use of its terminals, but also its line traffic. The Order, therefore, should contain a clause which will apply in every case where a shipper expressly requires the initial carrier to interswitch a car to another carrier for a destination common to the railways of both, authorizing the carrier on whose line the car has been loaded to charge and collect, instead of the interswitching toll, the appropriate rate of its published class or commodity tariff for its service, and this rate should be an additional charge against the shipment; provided that under its published tariff the initial carrier is able, by its own rails or by interswitching, to afford the same delivery and facilities at the same rate as the competing carrier.

It must, however, be made clear that the public interest is not met by the mere fact that the initial carrier has the facilities and a proper route for transportation to destination. Both must be open and available for concurrent transportation.

The best terminals may become blocked, and sidings and passing tracks on the line so congested that embargoes may be necessary. On the other hand, the initial carrier may have uncongested terminals and a free line, but no cars available for loading. In each instance, transportation at the moment is impossible by the initial carrier.

While the traffic offering on its line has been made immediately available by its investment, the initial carrier may obtain the benefit of this traffic only by delaying the movement until congestion ceases or cars are available. As a result, transportation is delayed and the general business of the country impeded.

Whenever it is possible to avoid this result by the use of another line, in the public interest it ought to be done. Many delays have occurred in the past, not only owing to congestion, but to car shortage. These delays have been intensified by war conditions. They undoubtedly will occur in the future, and more particularly in the winter.

I freely admit the right of each railway company to its own business, and that an unrestricted interswitching order, covering team tracks, upon payment of a comparatively trifling sum, throws open to a competitor (who may be entirely without proper terminal facilities), the terminals, and therefore the business and earnings of the initial carrier.

I am convinced, nevertheless, that in the interests of commerce and transportation, the initial carrier must forego its advantages unless it is in a position to handle the business offered it with proper despatch.

I would therefore provide, if the initial carrier failed to place a car within forty-eight hours after the usual order has been placed, or if traffic on its line is embargoed, that the shipper may require the initial carrier to accept and place, and that this carrier must place, the empty cars belonging to any other carrier; and that in this case the regular interswitching toll appropriate to the movement, and as herein fixed, should be the only remuneration to the initial carrier.

In the absence of a mandatory interswitching service, the Board's view has been that cartage allowances may be practised when properly published and filed. These cartage allowances and services have been frequently made the subject of complaint. The Board allowed it in the past on the ground that the general interswitching order was not a mandatory order requiring interswitching wherever possible, but merely a regulative order fixing the toll to be charged for interswitching service when performed.

The Board, however, has never been called upon as yet to pass on the question as to whether free or assisted cartage does or does not constitute a discrimination as between shippers and offends the general provisions of the Act. With the adoption of a compulsory system of interswitching, the whole question of free and assisted cartage must be considered.

The sections of the Act to be considered are as follows:—

“All such tolls shall always, under substantially similar circumstances and conditions, in respect of all traffic of the same description, and carried in or upon the like kind of cars, passing over the same portion of the line of railway, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise.

“2. No reduction or advance in any such tolls shall be made, either directly or indirectly, in favour of or against any particular person or company travelling upon or using the railway.”

Section 317.—3. No company shall—

“(a) make or give any undue or unreasonable preference or advantage to, or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever;

"(b) by any unreasonable delay or otherwise howsoever, make any difference in treatment in the receiving, loading, forwarding, unloading, or delivery of the goods of a similar character in favour of or against any particular person, or company;"

Cartage is a matter which the Board has held is not a railway responsibility, but if performed by the railway, the section of the Act interpreting the word "toll" as amended, in express terms covers cartage services, which have therefore to be included in the railway company's tariffs. These services, when performed, form therefore part of a railway rate, and if allowances are made for cartage, or free cartage is given by the company, constitute in fact a reduction of the transportation toll for the line haul.

The cartage in question is not general in its nature. It is not a privilege or a reduction open to all shippers or consignees at any given point. It is a service which companies in some instances have put in for the purpose of competition and with the object of overcoming the advantages which the terminal facilities of a competing line give it. It has not been put in for the purpose of meeting the advantages which a better located system of team tracks gives a competing line. So far as I know, no company has yet gone this length, but it has been made effective in connection with the shipments of merchants located upon or adjacent to private sidings of a competing line.

The question has been considered in the past rather having regard to the right of the company issuing the tariffs to overcome the advantages of the competing line and obtain traffic from industries located upon it, rather than from the standpoint of fairness as between shippers and merchants.

As a matter of fact, shippers served by industrial spurs have, as it is, an advantage over other shippers, but it is an advantage which the Act contemplates; an advantage for which shippers usually have paid something and have usually dedicated part of their own property to the purpose. It is, however, an advantage in fact, and one of considerable moment.

Free or assisted cartage is given for the purpose of equalizing the advantages the competing line has as a business-getter and accentuates the advantage the favoured shipper already has. With his spur he was in the past confined to movements by the line his industry was located upon, apart from this question of free cartage. With compulsory interswitching, he also receives the benefit of the service of any line, subject to the interswitching tolls.

The question has been considered by the Interstate Commerce Commission, and reference may be made to the case of *Wright v. United States* (1897) 167 U.S. 512, 17 Sup. Ct. R. 822, 42, L. Ed. 258. Here the Pittsburgh C. & St. L. Railroad Company, known as the "Panhandle," and the Baltimore and Ohio Railroad Company, owned competing lines between Cincinnati and Pittsburgh, W. and B. were each engaged in shipping beer from Cincinnati to Pittsburgh. The warehouse of B. at the latter point was connected by side-track with the track of the Panhandle, but not with that of the Baltimore and Ohio. The warehouse of W. was near the depot of the Baltimore and Ohio, but was not connected by track with any railroad. The rate on beer via either line was 15 cents per 100 pounds. It was customary for B. to ship over the Panhandle and thus secure delivery at his warehouse without extra charge. In order to obtain B.'s business the Baltimore and Ohio arranged with B. for the latter to haul his beer from the company's depot to his warehouse, the company to pay him at the rate of $3\frac{1}{2}$ cents per 100 pounds for the service. This sum represented the fair cost of the hauling. Although W. hauled his beer from the Baltimore and Ohio depot to his warehouse, no compensation was allowed him therefor. *Held*, that while the rail service performed by the Baltimore and Ohio was precisely alike in each case, the effect of the arrangement with B. was to enable him to secure the service for $11\frac{1}{2}$ cents per 100 pounds while W. was charged the regular rate of 15 cents; that the payment

to B. of the cost of hauling his beer from the company's depot was equivalent to the giving of a rebate within the meaning of section 2 of the Act.

This case affords an illustration of the discriminations which the cartage allowance system may entail. In the case of the Louisville Board of Trade v. Louisville and Nashville Railroad Company, 50 I.C.C., p. 684, the judgment reads:—

“To offset rule 17” (a rule which prevented interswitching from the industrial tracks to competing lines) “the competitors of defendant have for many years and at their own expense drayed competitive shipments, or made allowances for such drayage, between their rails and plants located only on defendant's rails, and thus it is said that rule 17 costs the shipper nothing in rates. But this is far from overcoming the difficulties in which certain shippers find themselves because of the rule. There are plants served only by defendant so located as in some cases to make drayage commercially inconvenient and in other cases physically impossible.

“There is another aspect of this drayage allowance. Industries located only on defendant's rails by routing over a competitor of that line can have shipments drayed at the expense of the competitor and laid down at any point desired within their plants. This is of advantage where unloading or storage is preferred at a point within the confines of the plant but far removed from the siding connected with defendant, and it is of record that shippers purposely invoke the operation of the rule to secure this advantage. At times the drayage allowance yields a profit over cost to the shipper. The result is a discrimination in favour of shippers located only on defendant's line, accorded by its competitors.”

As a matter of fact there is no doubt that in some instances, in view of the cartage allowances, the railway company owning the switch is at an absolute disadvantage in obtaining traffic, owing to the fact that with free cartage the competing line effects collection from door to door, and thereby saves the industry having the industrial switch the costs of loading the car and moving its goods from different points of its plant to the car. The practice gives the large operator a very substantial advantage over the small competitor who is not so favourably situated.

The discriminatory features I have alluded to would, to some extent at any rate, disappear, if companies went the full length of adopting the free or assisted cartage system for the purpose not only of meeting the advantages afforded by private sidings on the line of a competitor, but also the advantages that a better located system of team tracks and terminals give the competing line.

Under such a system, not only would the larger industries, served as they usually are by private sidings, obtain the benefit that a free or assisted system of cartage affords, but also other shippers who have not the advantages of being located upon or adjacent to sidings on a competing line.

It is only such shippers who are so located who obtain at the present the benefit of a free or assisted cartage system. It may well be, again, that in ordering inter-switching, which is as a matter of fact an alternative to cartage, railway cartage should entirely cease.

No complete discussion, however, has been had on the question of cartage one way or the other. Railway services have suffered from the unusual and aggravated conditions brought about by the war, and whatever the equities of the cartage situation may ultimately require, I would not at the moment make any order either extending it or prohibiting it. As a result, the whole of the cartage question will be left over for consideration on any application launched in the future.

May 15, 1918.

The Assistant Chief Commissioner and Commissioners McLean and Goodeve concurred.

GENERAL ORDER No. 230.

In the matter of the Interswitching of Freight Traffic.

File No. 6713. Case No. 2846.

Dated at Ottawa this 17th day of May, 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*D'ARCY SCOTT, *Assistant Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Under the authority conferred upon it by the Railway Act, the Board hereby rescinds its order No. 4988 (General Order No. 11), dated the 8th day of July, 1908, and doth order and declare as follows:—

1. For the interpretation, application, and operation of this order,—

(a) "Interswitching" means the movement of freight in cars between the unloading or loading tracks of one carrier, hereinafter called the "terminal carrier," and the point of interchange with another carrier by whom, singly or jointly with a further carrier, the said traffic has been carried from its point of shipment or is to be carried to its destination, hereinafter called, singly or jointly, the "line carrier," both the terminal carrier and the line carrier which interchanges with the terminal carrier being subject to the jurisdiction of the Board; the said movement being performed with or without the aid of an intermediate carrier whether subject or not subject to the jurisdiction of the Board, hereinafter called the "intermediary."

(b) The "interchange" means the junction between the terminal carrier and the line carrier, or between the terminal carrier and the intermediary, nearest to the point of loading or unloading of the car.

2. This order does not apply,—

(a) To tracks used by the terminal carrier for the transfer of freight between cars and its freight warehouse, or for the purpose of transshipment from car to car, nor to tracks otherwise set apart for its own working purposes, except team tracks;

(b) To joint movements which both begin and end in the same terminal or group of terminals or adjoining switching districts;

(c) To cars which, having been once properly interswitched for unloading, are reconsigned for unloading elsewhere within the same terminal or group of terminals.

3. Subject to the provisions of section 14, carriers shall at all times, according to their powers, furnish an interswitching service equal to the service accorded their own traffic at all points where interswitching facilities are, or may hereafter be, provided, under the circumstances and at the tolls herein prescribed;

Provided that no terminal carrier or intermediary shall be obliged hereunder to make any movement exceeding the distances herein specified at the tolls herein prescribed, and that the said distances be irrespective of the location of the interchange and of yard limits or boundaries.

4. The toll of an intermediary subject to the jurisdiction of the Board shall not exceed, irrespective of weight, three dollars per car for any distance within and including three miles, or three dollars and fifty cents per car for any distance exceeding three miles to and including four miles.

5. If the traffic is loaded or unloaded upon private sidings connecting with the railway of the terminal carrier, or directly from or into an industry, elevator or yard abutting upon its tracks (commonly known as industrial sidings), or in any public stock yard, the toll of the terminal carrier shall not exceed one cent per 100 pounds for the actual weight thereof, subject to the minimum weight of the line carrier's tariff, for any distance within and including four miles from the interchange; except that the terminal carrier shall be entitled to a minimum charge of three dollars per carload of traffic included in the seventh, eighth and tenth classes of the Canadian Freight Classification, and five dollars per carload of all other traffic.

6. The toll of the terminal carrier upon all traffic other than that referred to in section 5, including traffic to or from team tracks, shall not exceed two cents per 100 pounds for the actual weight thereof, subject to the minimum weight of the line carrier's tariff, for any distance within and including four miles from the interchange; except that the terminal carrier shall be entitled to a minimum charge of six dollars per car.

7. Not less than the following proportions of the tolls herein prescribed shall be absorbed in the rate of the line carrier and the remainder shall be an addition thereto:—

(a) One-half of the tolls charged by the terminal carrier under section 5 as qualified by section 9.

(b) Of the tolls prescribed in section 6 one-half of the tolls permitted under section 5, as qualified by section 9, as if the movement were to or from private sidings.

(c) One-half of the herein prescribed or lower tolls of each intermediary, if any, whether subject or not subject to the jurisdiction of the Board.

Provided that the line carrier may, unless its tariff rate is lower, charge and collect twelve dollars per car for its haul between the interchange and the point of shipment or destination when by reason of such absorption its line charges would otherwise be less than that amount.

8. The appropriate tolls hereinbefore prescribed shall not be exceeded, for the distances herein specified, in each direction for the movement from and the return to the line carrier of so-called off-line transit traffic, and the line carrier shall be subject to the absorption provisions of section 7 only when its through rates are the sum of its published rates to and from the stop-over point.

9. If an extra car, commonly known as an idler, is used solely to take care of an overhang of long articles loaded on an open car, it shall be charged by the terminal carrier not more than two-thirds of the herein prescribed appropriate toll for the minimum weight of the line carrier's tariff, except that the terminal carrier shall be entitled to a minimum charge of three dollars per car. If interposed between two cars in the same shipment to protect an overhang from each the idler shall be charged for once only.

10. No charge shall be made for the accessory interswitching of the empty car. If the car is loaded in both directions the interswitching toll shall be charged for each movement.

11. Subject to the provisions of section 14, nothing herein contained shall prevent the line carrier from absorbing the entire toll or tolls charged for interswitching competitive traffic, provided that the traffic and movements so treated are clearly defined in its tariffs.

12. Traffic to or from the United States shall be subject to the provisions of this order at the point of shipment or destination in Canada.

13. If an exceptional rate is published to apply to or from the tracks of the carrier line only, the ordinary rate which includes the right of interswitching shall be plainly

indicated in the same schedule, and the latter rate shall not exceed the former by more than the appropriate toll herein prescribed for the interswitching service.

14. Except as hereinafter provided, the tolls herein prescribed shall not apply to deprive the initial carrier of the line haul by a reasonable route of traffic loaded or to be loaded on its railway, including sidings connecting therewith, provided it furnishes at the destination, itself or through its connections or by interswitching, the same delivery and facilities as the competing carrier at no greater charge.

If a car is expressly ordered by the shipper to be interswitched to another railway, notwithstanding that the initial carrier can furnish the services as above provided, the said initial carrier may, in lieu of the tolls otherwise prescribed herein, charge and collect its ordinary published tariff rate to the interchange, which rate shall be an additional charge against the shipment.

Provided, however, that if the said initial carrier fail or neglect to furnish the shipper with a car within forty-eight hours after it has been requested, or should through movement by the route of the initial carrier be embargoed, the shipper may require the initial carrier to accept and place, and the said carrier shall so accept and place, an empty car of any other carrier, in which case the movement of the empty car in and the loaded car out shall be effected under the provisions of sections 10 and 5 or 6, as the case may be.

The schedule to give effect to this order shall be published and filed to come into force on the first day of July, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27203.

In the matter of the crossing of Marmora street by the Canadian Northern Railway at Trenton, in the province of Ontario, and the Order of the Board No. 26691, dated October 29, 1917, requiring the Canadian Northern Railway Company to appoint a watchman at the said crossing until further Order of the Board.

File No. 3878.285.

THURSDAY, the 25th day of April, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading the submissions filed and the report and recommendation of the Assistant Chief Engineer of the Board,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, required to maintain day and night watchmen at the crossing by its railway of Marmora street, Trenton, Ont., and to install forthwith at the said crossing an indicator bell to warn such watchmen when trains are approaching from the east.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27192.

In the matter of the application of the Canadian Pacific Railway Company for authority to remove the station agent at Senate, Sask.

File No. 4205.126.

MONDAY, the 6th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Saskatchewan Grain Growers' Association,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, authorized to remove its station agent at Senate, Sask., until the first day of September, 1918, on which date the order of the Board No. 26246, dated January 25, 1917, shall be put into effect.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27205.

In the matter of the application of the Algoma Central and Hudson Bay Railway Company, hereinafter called the "applicant company," under section 340 of the Railway Act, for the approval of a form of "release of liability in respect of persons travelling in non-passenger cars," to be signed by those who desire for special reasons to travel in cars which are not intended to carry passengers.

File No. 16749.30.

MONDAY, the 6th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, the Board having adopted a standard form of release of liability in respect of persons travelling in non-passenger cars,—

It is ordered: That the applicant company be, and it is hereby, authorized to use the following form in respect of persons travelling in non-passenger cars, as follows, namely:—

"THE ALGOMA CENTRAL AND HUDSON BAY RAILWAY COMPANY.

"Release of Liability in Respect of Persons Travelling in Non-passenger cars.

"In consideration of the Algoma Central and Hudson Bay Railway Company permitting me, at my request, to travel between..... and....., or for part of this distance, in a car not intended to carry passengers, which I am not entitled by law to do, I do hereby release and discharge the said company of and from all claims and demands of

whatsoever nature which I may now or at any time hereafter have or could maintain by reason or on account of any loss, damage or injury to person or property which I may sustain or suffer in getting to or from, or on or off, any such car, or while travelling in any such car, or in any manner in connection with or as a consequence of the journey so made, whether any such loss, damage or injury be caused by negligence or otherwise.

"Dated at this
day of..... A.D. 19....

".....

"Witness:

"....."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27190.

In the matter of the complaint of the town of Cornwall, in the province of Ontario, against the train service furnished by the Grand Trunk Railway Company between Cornwall and points between Coteau Junction and Ottawa.

File No. 2563.60.

TUESDAY, the 7th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, *Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the railway company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, required forthwith to make connection between its eastbound passenger trains, due to leave Cornwall at 4.15 and 4.45 p.m., arriving at Coteau Junction at 5.18 p.m. and 5.30 p.m., respectively; and the train due to leave Montreal at 5 p.m., and now due at Coteau Junction at 6 p.m., arriving in Ottawa at 8.45 p.m.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27216.

In the matter of the consideration of the question of the protection to be provided at the crossing of Regent street by the Grand Trunk Railway, in the town of Hawkesbury, province of Ontario.

File No. 9437.1248.

THURSDAY, the 9th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board, held at Ottawa, May 7, 1918, the town of Hawkesbury and the railway company being represented at the hearing, and what was alleged, and upon the report and recommendation of an inspector of the Board,—

It is ordered: That, within sixty days from the date of this order, the Grand Trunk Railway Company install an improved type of automatic bell at the said crossing, in accordance with "The Standard Specifications for Highway Crossing Signals," approved under general order No. 96, and thereafter maintain the said bell at its own expense; a detail plan showing the layout thereof to be submitted for the approval of an Engineer of the Board; twenty per cent of the cost of installing the said bell to be paid out of "The Railway Grade Crossing Fund," and the remainder to be paid by the railway company.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27184.

In the matter of the application of the British Columbia Electric Railway Company on behalf of the Vancouver and Lulu Island Railway and the Vancouver, Fraser Valley and Southern Railway Companies for approval of Standard Mileage Freight Tariff of Maximum Tolls, C.R.C. No. 107.

File No. 21404.

FRIDAY, the 10th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The said Standard Freight Tariff having been filed on the basis permitted by the Board in its Order No. 27159, dated April 26, 1918,—

It is ordered: That the applicant company's said Standard Freight Tariff of Maximum Mileage Tolls, C.R.C. No. 107, dated to become effective May 20, 1918, be, and the same is hereby, approved; the said tariff, with a reference to this Order, to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27195.

In the matter of the application of the London and Lake Erie Railway and Transportation Company, under section 11, chapter 61, 7-8 Edward VII, for approval of amendment to by-law No. 3, passed November 19, 1912, substituting the name W. N. Warburton, general manager of the company for that of S. W. Mower, where the latter name appears in the original by-law on file with the Board under file No. 16890.

FRIDAY, the 10th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said amendment to by-law No. 3, passed November 19, 1912, substituting the name of W. N. Warburton, general manager of the company for that of S. W. Mower, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27206.

In the matter of the Order of the Board No. 21350, dated February 11, 1914, requiring the crossing of Bennett avenue by the Canadian Northern Quebec Railway and the Montreal Terminal Railway at Maisonneuve, in the province of Quebec, to be protected by a pair of gates, and the application of the Canadian Northern Quebec Railway Company for an Order amending the said Order No. 21350.

File No. 9437.1067.

FRIDAY, the 10th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed on behalf of the railway companies and upon its appearing that notwithstanding the usual practice of the Board the word "operation" was through an error omitted in paragraph 3 of the said order,—

It is ordered: That the said Order No. 21350, dated February 11, 1914, be, and it is hereby, amended by inserting the words "and operation" after the word "maintenance" in the first line of paragraph 3.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 233.

In the matter of the General Order of the Board No. 227, dated April 12, 1918, as amended by General Order No. 228, dated April 16, 1918, directing and requiring all railway companies, including Government Railways in Canada, to advance by one hour the standard time now observed and used by them in the different zones in which they operate; the said change to become effective on the respective railways and in the said different zones not before twelve o'clock Saturday evening, April 13, and not later than two o'clock Sunday morning, April 14, 1918, and to remain in force and effect until two o'clock on Thursday morning, the 31st day of October, 1918.

File No. 27921.

SATURDAY, the 11th day of May, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, *Commissioner.*

Whereas the Governor in Council by Order in Council dated May 7, 1918, has amended the Order in Council No. P.C. 898, dated April 12, 1918, so that the prescribed time during which the Daylight Saving Act, 1918, shall be in force shall be until two o'clock on the morning of Sunday, the 27th day of October, 1918, the day fixed in the United States for returning to the usual time,—

It is ordered: That the said General Order No. 227, dated April 12, 1918, be and it is, hereby amended to provide that the prescribed time during which the Daylight Saving Act, 1918, shall be in force shall be until two o'clock, on the morning of Sunday, the 27th day of October, 1918, the day fixed in the United States for returning to the usual time as hereinabove.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27211.

In the matter of the crossing of the tracks of the Grand Trunk Pacific Railway Company and the Midland Railway Company of Manitoba at a point in parish lot 55; parish of St. Boniface, in the city of Winnipeg, province of Manitoba, and the application of the Midland Railway Company of Manitoba for an order deciding the question of seniority between the Grand Trunk Pacific Railway Company and the Midland Railway Company of Manitoba at the said crossing.

File No. 18122.2.

MONDAY, the 13th day of May, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Winnipeg, March 6, 1917, in the presence of counsel for the railway companies, and what was alleged,—

It is therefore declared: That the Grand Trunk Pacific Railway Company is the senior company at the point of crossing of its tracks with the tracks of the Midland Railway Company of Manitoba in the said parish lot 55, parish of St. Boniface, in the city of Winnipeg, province of Manitoba.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27213.

In the matter of the application of the Napierville Junction Railway Company under the amending Act, 7-8 Edward VII, chapter 61, section 11, for approval of its by-law No. 29, passed January 20, 1913, authorizing N. J. Ferguson, general freight and passenger agent of the company, to prepare and issue all tariffs of tolls of the company and to specify to whom, the place where, and the manner in which such tolls shall be charged.

File No. 17405.

TUESDAY, the 14th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law No. 29, authorizing N. J. Ferguson, general freight and passenger agent of the Napierville Junction Railway Company to prepare and issue all tariffs of tolls for the carriage of traffic on the said companies railway, on file with the Board under file No. 17405, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 232.

In the matter of the application of the Canadian Manufacturers' Association for an Order disallowing the increased carload minimum weights of tan bark, published in Supplement No. 8 to the Canadian Pacific Railway Company's Tariff C.P.C. No. E-3225, and Supplement No. 1 to the Grand Trunk Railway Company's Tariff C.R.C. No. E-3477.

File No. 19475.41

TUESDAY, the 14th day of May, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. MCLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, November 20, 1917, the Canadian Manufacturers' Association, the Canadian Freight Association, and the Grand Trunk, Canadian Pacific, and the Canadian Northern Railway Companies being represented at the hearing, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the minimum carload weights of tanbark, when carried in box or stock cars under special commodity tariffs, be as follows, namely:—

For cars not over 30 feet 6 inches in length, inside measurement, 21,000 pounds.

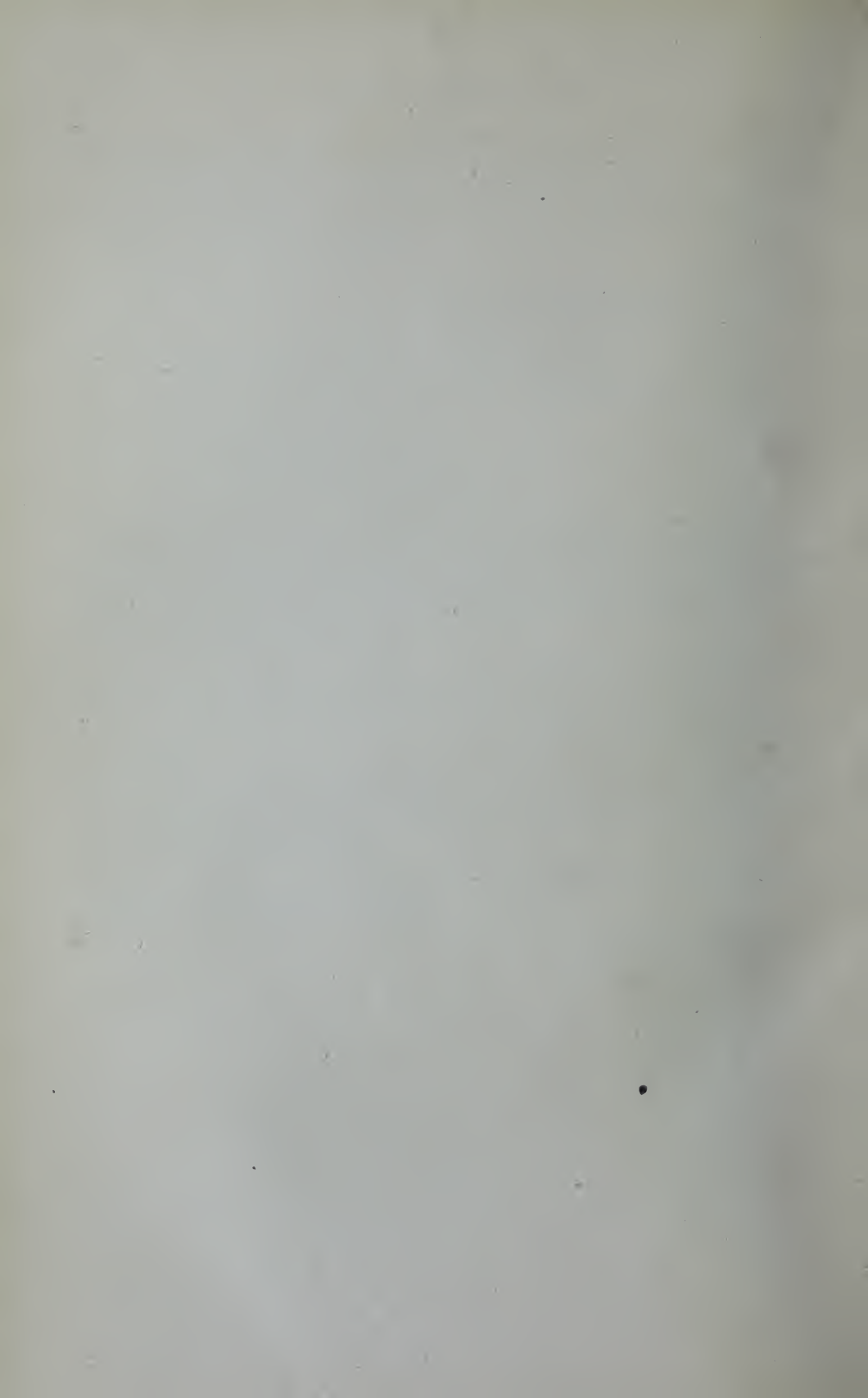
For cars over 30 feet 6 inches and not over 34 feet 6 inches in length, inside measurement, 23,000 pounds.

For cars over 34 feet 6 inches and not over 36 feet 6 inches in length, inside measurement, 28,000 pounds.

And it is further ordered: That the General Order of the Board No. 221, made herein, be, and it is hereby, rescinded.

D'ARCY SCOTT,
Assistant Chief Commissioner.





The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of the Ontario Associated Boards of Trade, per H. L. Frost, Hamilton, Ont., with reference to unsatisfactory conditions prevailing with respect to delivery of freight to, and facilities afforded at flag stations.

File 2338.4.

JUDGMENT.

Mr. COMMISSIONER GOODEVE:

This case was heard at Hamilton on October 22, 1917, when Mr. Marshall appeared for the Associated Boards of Trade. Mr. H. L. Frost, President of the Associated Boards of Trade, through whom this complaint was formulated, said in his letter of June 23, 1917:—

“In order to be able to present to the Board some tangible evidence of the conditions obtaining we circularized a number of merchants, customers of wholesale houses in different distributing centres, asking for information as to what protection was afforded goods after being unloaded, as to loss and damage sustained and what in their opinion were the main reasons therefor. We are forwarding with this application the replies received from some eighty merchants obtaining goods at about the same number of stations.”

Out of these eighty replies submitted, and which were carefully gone over and checked, it was found that a number of them had to do with railways over which this Board had no jurisdiction. A careful analysis of these complaints, and of the evidence on file and adduced at the hearing would show that the complaints may be divided as follows:—

1. Those due to the defect in the shelter already provided either from being inadequate or in a bad state of repair.
2. Damage due to carelessness on the part of the company's employees in unloading.
3. Those in which no shed or shelter of any kind was provided for the protection of goods.
4. Difficulty in obtaining proper evidence in case of claims for loss or damage of goods.

With regard to the first: These complaints were taken up at the hearing individually with the particular company interested. Mr. Chisholm, for the Grand Trunk Railway Company said that he had a list of nineteen cases in all in which complaints

were made; twelve on their Ontario lines, and seven on their eastern lines. In each case where the defect was with regard to physical conditions of the shelter provided he undertook, on behalf of the company, to have the defect remedied. In like manner Mr. Flintoft for the Canadian Pacific, and Mr. Temple for the Canadian Northern, undertook to rectify complaints of a similar nature that were found justifiable.

With regard to the second: It was argued that if a shelter was provided at all stations and the employee handling the freight was compelled to leave his car and unload the goods from the platform, placing them in a shelter, there would not be the same likelihood of their being damaged by careless handling. It was stated that at present packages were frequently dropped from a moving car onto the platform or ground. In reply it was pointed out by the railway companies that a train must be stopped, the seal broken and the car opened before packages can be taken out; that the same men handle this freight as handled it at the regular stations, and there was no reason, therefore, why it should receive any different treatment. I am satisfied, however, that there are cases where packages are dropped off without the employee leaving the car, and sometimes while the car is moving. The question is would the result in damages from this cause be sufficient to justify an order for the erection of shelters at all flag stations, or is there some other way that this damage might be eliminated.

I think if an order was issued directing all railway companies under the Board's jurisdiction to issue a bulletin notifying conductors in charge of L.C.L. freight that all packages for flag stations must be unloaded from the platform after the train has come to a full stop; that wherever shelters are provided they must be placed in the same; and that conductors will be held responsible for the carrying out of these instructions, it would meet the situation.

With regard to the third: In addition to the reason given in the second, it was pointed out that there was the loss from exposure to weather conditions, pilfering, destruction by animals, etc. Mr. Marshall argued that the damages resulting from all these causes were sufficient to justify an order for freight sheds at all flag stations. In further support of his contention he quoted the Board's General Order No. 54 (9160), applicable to the provinces of Manitoba, Saskatchewan, and Alberta. The railway companies in reply argued that conditions were entirely dissimilar and that this order should not be taken as a criterion. That in the western provinces the regular stations with agents were, in many cases, a very long distance apart, as much as fifty or sixty miles, and in some cases even greater. That the settlement was sparse and the average distances of the settlers from the stations were greater. That there was greater difficulty in obtaining knowledge of the arrival of goods. While in Ontario there were a large number of flag stations that were intended merely as jumping-off places and were never meant for the delivery of freight. That even in many places where freight was now delivered it was a condition that had grown up out of the desire on the part of the railways to accommodate their patrons by dropping off their goods at a side road or concession in order to save them a few miles' drive to the regular station. That if the shippers or consignees were not willing to take the additional risk which they claimed was involved in shipping to flag stations, they had the option of billing to regular stations which in a very great majority of cases was only a few miles farther away.

They further argued that it had not been shown that the percentage of loss at these flag stations was any greater than at the regular stations.

Mr. Temple, of the Canadian Northern Railway, in his letter to the Board of December 22, 1917, page 3, said:—

“Our freight claims agent points out that there are only about seventy-five shipments to flag stations on our line complained of by the Boards of Trade, and taking into consideration the fact that nearly 19,000 O. S. and D. reports were issued between January 1 and November 1 this year, the proportion of reports on flag shipments is very small and would indicate that there is not a serious grievance in this matter.”

Mr. Flintoft, of the Canadian Pacific, in his letter of January 19 says: "As a matter of fact the number of discrepancy reports received in relation to this traffic has been extremely small."

After some discussion upon the various points raised, the Chief Commissioner pointed out the difficulty of arriving at a fair solution that would be equitable to all parties. At page 5518, Vol. 276, of the evidence:—

"The CHIEF COMMISSIONER: What is your idea of what is a fair amount of traffic; give it to us in any way you can put it. How much should be received at any station to make it worth while to load up the service?"

"Mr. MARSHALL: That is difficult to say."

"The CHIEF COMMISSIONER: Would you like to think it over in order to arrive at some basis to work on? Talk it over with the shippers, get their ideas and find out what their real troubles are."

Page 5520:—

"Mr. FLINTOFT: It's all package freight, sir—L.C.L. freight."

"The CHIEF COMMISSIONER: Set to work and try and map out a definition of what should be done and Mr. Marshall will do the same thing."

As a result of this direction Mr. Marshall submitted a letter to the Board under date of November 10, 1917, in which he gave the following as the submission of the Ontario Associated Boards of Trade:—

"The committee acting for the Ontario Associated Boards of Trade have considered this question and respectfully suggest that a gross revenue of \$500 per annum at such stations should be sufficient."

"On page 5516 of the record Mr. Flintoft, in reply to a question of the Chief Commissioner stated that the shelter would cost about \$300. This would mean a carrying charge of approximately \$50 per annum made up of: interest, 6 per cent, \$18; repairs and depreciation, 10 per cent, \$30. Five hundred dollars gross revenue would produce \$150 net on an operating ratio of 70 per cent, which we submit is fairly high considering that a flag station, being a non-agency point, lessens the operating costs."

Mr. Chisholm, on behalf of the Grand Trunk Railway Company, under date of December 13, 1917; Mr. Beatty, of the Canadian Pacific Railway, under date of December 17, 1917, and Mr. Temple, of the Canadian Northern, under date of December 27, 1917, all submitted letters in reply to Mr. Marshall, the contention in each being practically the same, all three claiming that the amount named by Mr. Marshall was entirely inadequate, and that the minimum should not be less than \$2,000 per annum; L.C.L. traffic only to be considered. That it is impossible under present conditions to build a suitable flag station for \$300, although admitting this was the amount named by Mr. Flintoft at the hearing; but, even accepting this amount as correct, and taking Mr. Marshall's figures as a fair division, it would be unfair to accept a gross amount of \$500 as a minimum requiring the construction of a shelter. On this computation the interest and depreciation on station structure alone, apart from platform, would amount virtually to one-third the total freight earnings on traffic handled to and from it; only two-thirds being left for the company's return for the handling of this particular traffic, including the use of its permanent way, rolling stock and other facilities. That it would mean a gross revenue of only \$1.60 per day. That the cost of the additional stop owing to wages paid the train crew and enginemen, apart altogether from fuel, is greater in many instances than the total revenue from the particular traffic unloaded. That no additional revenue is brought to the company by these flag stations, as the traffic would be handled from the nearest regular agency in any case.

Without for the present passing upon the merits in detail of the several arguments advanced on both sides, but giving full weight and due consideration to the difficulties surrounding this traffic as developed by these arguments, I am of the opinion that a case has not been made out which would justify the Board in making a general order that would involve a fairly large expenditure of money by the railway companies at a time when it is essential that every dollar should be conserved wherever possible without undue injury to the public service.

No doubt there are many cases where an order for a shelter would be justified, but I think these should be dealt with on individual applications.

With regard to the fourth: The importance attached to this by the complainants may perhaps best be shown by the quotations from their applications:—

"3. That railways keep more accurate records of goods delivered at flag stations by providing train conductors with proper forms (other than way-bills) containing particulars of freight for such flag stations, such forms to be properly checked with freight unloaded and certified to by the conductor.

"4. That railways must investigate claims for damage or shortage and not peremptorily decline same as being released from every responsibility as would appear to be the present practice.

"5. That railways shall be liable for such claims unless they furnish claimants with documentary evidence properly attested to that property was duly unloaded in good order and condition, and the burden of proof shall be on the carrier.

"6. That Order No. 6242, dated 8th February, 1909, be amended by providing that the consignor in signing a release acts as agent of the consignee, and on his instructions as to the point which shipment is made."

Mr. Hugh Blain, a wholesale grocer, a large shipper, and one especially interested in this particular traffic, gave evidence emphasizing this phase. He put on record a series of letters showing the difficulty of obtaining a prompt and satisfactory settlement of claims for loss due to shortage, or of such evidence as would enable him to judge who should properly be held responsible for the loss.

The solution suggested by Mr. Marshall, on behalf of the complainants, was the use of duplicate bills. The back of the original bill to be carbonized to produce a manifold record on the way-bill beneath. He claimed this would entail no further work than at present on the part of either the biller or conductor.

This was contested by the railway companies on several grounds. The additional expense involved. That it would necessitate an entirely separate set of way-bill forms for flag station traffic which would have to include full-size, quarter-size, and half-size forms. The burden placed upon their agents at shipping points by the addition of another variety to their already heavy list of forms. It would necessitate a separate file of these duplicate way-bills being kept at agencies which would not be as satisfactory a record as that which was now among their permanent records at the audit office. That there would be no real advantage to the shipper over the present system. That in all cases where the consignor or the consignee desired it, the companies would furnish a verified copy of the way-bill with all the notations as to damage or shortage made by the conductor upon it, or upon demand the original way-bill would be sent to the point of shipment or delivery for the inspection of the claimant which they claimed was an actual advantage over the proposed arrangement, as the claimant might be either the consignor or the consignee. That the conductor already checks and signs the way-bill, making a notation as to damage or shortage upon it. That it is upon this statement that the action of the Claims Agent is based.

Page 5521:—

"The CHIEF COMMISSIONER: In the case of an ordinary unloading you have the receipt and have your books to keep it quite clear. But what machinery is there in the case of flag stations of the train crew having to keep track of what they have done?

"Mr. CHISHOLM: We have the conductor's certificate at the end; he checks it up and leaves it at the station upon which the freight is billed.

"Mr. FLINTOFF: They have the way-bill, as Mr. Chisholm has indicated. Whenever they take freight out of a car if there is anything which is in bad order they put it into the bill of lading just the same as at any other station." Page 5526:—

"Mr. MARSHALL: We are not asking for the same treatment at a flag station as we get at a regular station. We are not asking that the goods be checked out, or expense bills made out and receipts given."

Page 5527:—

"Mr. HUGH BLAIN: We do not want to interfere, Mr. Chairman, with any proper system for the delivery of goods. But after the railway companies receive the freight they do not give the shipments the attention they are entitled to receive, with the result that a great many cases of shortage occur.

"What we claim is that there should be some system by which a man making a claim would have some direct evidence that his goods had been actually put off at the station.

"The CHIEF COMMISSIONER: How would you get at it? Look at this way-bill here.

"Mr. BLAIN: I am inclined to think that this way-bill system is not being thoroughly enforced.

"The CHIEF COMMISSIONER: You mean not carried out?

"Mr. BLAIN: Yes, sir. That is what I mean."

I think there is a tendency on the part of the railway companies to rely too much on the release form furnished by Board's General Order No. 27 (6242) and that sufficient pains are not taken in all cases to trace up the cause of loss and furnish complainants with the evidence upon which their claim is based.

It is to be noted in Mr. Blain's evidence that he states he was never at any time furnished with a verified copy of the way-bill; or any other evidence of the grounds upon which his claim was refused.

I am of the opinion that Mr. Marshall's views might be met, and the same results obtained without the expense and other objections of the carriers by adopting for general use a stamp to be agreed upon to be used on all bills of lading drawn upon flag stations, somewhat as follows:—

UNLOADED WITHOUT EXCEPTION

EXCEPT AS NOTED.

.....
Date.....

Conductor

To be signed by the conductor. This is in accordance with the system proposed to be put in force by the Canadian Northern Railway Company, as outlined in Mr. Temple's letter of December 27, page 3.

It is true the conductor is at present supposed to check off items and make his notations before signing the way-bill, but from the evidence submitted there would appear to be some doubt as to the care or accuracy with which this is done. The stamp would have the effect of calling his attention to the necessity of making a note of any exceptions. I think if this were done, and the claims agents of the various railway companies instructed to see that as far as possible complainants were furnished with full data as to the reasons for refusal and informed that they must at all times, upon request of complaints, furnish a verified copy of way-bill, the dissatisfaction and friction would be largely removed.

There was one other point that was incidentally brought out, viz., that there was no uniformity of practice among the railway companies as to notice given consignees *re* the arrival of goods. Mr. Martin, general freight agent of the T. H. and B. Ry. Co., when asked how the consignee got his advice, said at p. 5524: "He is supposed to be there to take his goods." Mr. Flintoft, of the C.P.R. said: "So far as I can remember our practice is that there is a telephone message sent to the consignee, or a post-card is sent notifying him of the arrival of the freight." Mr. Temple, of the C.N.R.: "We do not give any notice." Mr. Chisholm, of the G.T.R.: "I am told we give notice."

I think there should be uniformity of practice with regard to the notice given.

OTTAWA, April 30, 1918.

The CHIEF COMMISSIONER:

I agree in the results arrived at by Commissioner Goodeve in his judgment, which I have had the opportunity of reading.

With regard to the proper practice to be followed by railways advising consignees of the arrival of the goods at flag stations, there is no room for doubt that uniformity of practice, as Mr. Goodeve finds, should be adopted.

Proper practice calls for the delivery of the way-bill on which freight delivered at a flag station is carried to the first agency station next past the flag station where delivery has been made.

It should be made the duty not only of the conductor to deliver the way-bill to the agent at the first agency station reached after making delivery of the goods, but the duty should be thrown upon the agent at the said station of notifying the consignee by post-card, mailed within twenty-four hours from the receipt of the bill of lading.

May 2, 1918.

GENERAL ORDER No. 235.

In the matter of the complaint of the Ontario Associated Boards of Trade complaining of insufficient and inadequate facilities furnished by railway companies for the receiving and delivering of freight at flag stations.

File No. 2338.4.

WEDNESDAY, the 22nd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Hamilton, October 22, 1917, in the presence of counsel and representatives for the complainants, the Grand Trunk, the Canadian Pacific and the Canadian Northern Railway Companies and the Michigan Central Railroad Company, the evidence offered and what was alleged, and reading the written submissions filed on behalf of the interests affected,—

It is ordered: That every railway company subject to the jurisdiction of the Board, be, and it is hereby directed to provide its agents with rubber stamps reading as follows:—

UNLOADED WITHOUT EXCEPTION.

EXCEPT AS NOTED.

.....
Conductor.

Date.....

and to issue a bulletin,—

(a) requiring agents issuing way-bills for shipments of less than carload freight destined to flag stations to place the above stamp thereon;

(b) requiring conductors in charge to unload such freight on the platform at the flag station after the train has been brought to a full stop, and wherever shelters have been provided, to place such freight therein, and to certify, as above, on the way-bill;

(c) requiring conductors who have unloaded freight at flag stations to deliver the way-bill therefor at the first agency station reached by the train after the unloading of such freight;

(d) notifying such conductors that they will be held responsible for the proper carrying out of the requirements set forth in this order and as covered by the said bulletin;

(e) requiring the agent at the first agency station reached by the train after the unloading of the freight, as in this order provided, to notify the consignee of the arrival of such freight by postal notice mailed within twenty-four hours after receiving the way-bill from the conductor.

H. L. DRAYTON,
Chief Commissioner.

Application for a ruling of the Board in the matter of protection of the old rate on cars shipped previous to March 15, 1918, into interior elevators on the milling and storage in transit arrangement and reshipped out after the new rates came into effect.

File No. 8641.3.

JUDGMENT.

The CHIEF COMMISSIONER:

The ruling of the Board is asked on the question as to whether flour and grain products milled at a point in transit shall be carried to destination at the rate which obtained when the original shipment of the grain was made, plus the one cent charged for stop-over privilege; or whether the flour or other grain products ought to move at the through rate obtaining at the time the transportation of the flour or grain products takes place.

I have had the advantage of reading the judgment of Commissioner McLean, which fully sets out the difficulties of the question and the arguments made by the railways. It is unnecessary for me to restate them or the position of shippers at any length.

Under the practice which obtains in Canada, grain moves at the local rate and on a bill of lading carrying it only to the local point, and containing no reference whatever to milling-in-transit privileges and furtherance rates.

This is provided for by tariff notations. In the case of the Canadian Northern no difficulty arises; its provision reads as follows:—

“Under the rates to Port Arthur, Ont., Duluth, Minn., and Superior, Wis., shown herein, grain may be shipped to stations in the direct line of transit for milling, malting, storage, or cleaning in transit, and reshipment made to Westfort, Fort William, Port Arthur, Ont., Duluth, Minn., or Superior, Wis., at the remainder of the through rate in effect on date of original shipment, from point of origin to final destination, plus 1 cent for extra terminal service.”

The point is made perfectly clear that the through rate that is to be considered, and on which the charge is to be based, is the through rate which was in effect on the date of the shipment of the grain from its point of origin to the final destination of its products.

The tariff provisions of the other western companies, however, effective prior to the 15th March (when the advance in rates recently allowed became effective) merely provide that the reshipment shall be at the balance of the through rate from the point of origin to final destination.

The more recently filed tariff of the Canadian Pacific Railway Company, effective March 15, provides that the balance of the through rate from point of origin to final destination shall be that which is effective on date of reshipment. The result is:—

1. The Canadian Northern tariff provides clearly that the through rate in effect at the date of original shipment shall apply.

2. The tariff of the Canadian Pacific Railway Company, effective prior to March 15, does not define what through rate shall apply.

3. The tariff (C.P.R.) effective March 15 makes it clear that the movement shall be on the basis of the through rate which is applicable at the time of reshipment.

Tariffs, when ambiguous, if they can reasonably and properly be read in ease of the shipper following the usual practice are so construed. The tariffs of the Canadian Pacific and Grand Trunk Pacific Companies prior to the 15th March are ambiguous, in that they do not define clearly what specific through rate ought to apply. It is perfectly true that milling-in-transit has been defined by the Board as a privilege, but because the Board has so defined it certainly does not mean that that privilege cannot become and does not become a right. It is a privilege in that it constitutes a tariff provision that the Board cannot order (except when such order would be justified for the purpose of removing discrimination), but the company extending the privilege to shippers by their tariffs are bound just as much by the privilege, so-called, that their tariff contains, as they are by any other tariff provision.

It clearly follows that, being a privilege, it is open to the companies to fix terms and conditions on which the privilege is extended, subject always to the equality provisions of the Act and to the inhibitions of discrimination. That being the case, to my mind it is perfectly clear that the Canadian Pacific and Grand Trunk Pacific Companies had the right to make the provision that they have made in their tariffs now in effect. The situation as I see it has to be left in a somewhat unfortunate position as, according to the accident of date of shipment, it is obvious that some millers will obtain advantages over others. This condition, however, is inevitable. I am, therefore, of the opinion:—

(1) That all coarse grain which moved from point of origin prior to the 15th day of March ought to move forward (if shipped in the six months' period) from the milling point under the tariff regulations which were then in force, which would mean that the milled product would go forward at the balance of the through rate existing at the time of the original shipment.

(2) That, in connection with wheat, all wheat which was shipped prior to the 15th day of March last, will move at the wheat rates which, at the time of the original shipment, were and still are applicable.

(3) That all wheat originally shipped on and after the 15th day of March and forwarded from milling point to destination before the 1st day of June next, will also be taken to destination on the old through-rate basis.

(4) Wheat which was originally shipped on and after the 15th March, but which has not been forwarded from the milling point before the 1st day of June, when the higher wheat rates come into effect, will move to destination at the remainder of the through rate applicable at that time, when the original shipment has been made by a company whose tariffs express the milling-in-transit privilege as subject to the payment of the balance of the through rate effective on date of reshipment.

May 15, 1918.

Commissioner Goodeve concurred.

Mr. COMMISSIONER McLEAN:

Various complaints have been received in regard to the milling-in-transit arrangements and analogous arrangements as affected by tariffs which came into operation on March 15, 1918. The United Grain Growers, Limited, write as follows:—

“The question has come up in regard to cars shipped into interior elevators on the milling-and-storage-in-transit arrangement; that is, cars which were shipped before March 15 and unloaded in the interior elevators, when they are reshipped out the railways claim that they should be shipped at the balance of the new through rate. According to the tariffs which were in effect before this increase was put in, provision was made that on reshipment made to Westfort, Port Arthur, or Fort William, the balance of the through rate from point of origin to destination, plus 1 cent per 100 pounds for extra terminal service, would be protected. As the shipments which were forwarded before March 15 and were put in store started under the old rates, we are under the impression that these rates should be protected on the reshipment, as the contracts with the railway companies were made before the new rates became effective. For instance, a car shipped from Wilkie, on the C.P.R., put into storage at Saskatoon, should receive the benefit of the 24-cent rate on the outward shipment, plus the stop-off of 1 cent per 100 pounds, instead of the new rate of 26 cents, plus 1 cent per 100 pounds stop-off.”

By subsequent correspondence it is pointed out that as the new rates on wheat will not become effective until June 1, 1918, the letter in question should be treated as applicable to all grain with the exception of wheat.

The Northwest Grain Dealers' Association writes as follows:—

“There has considerable confusion developed in the West over the application of the new rates on freight to the shipment of coarse grains. There has been in the past, as you know, a considerable shipment of oats and other grains into interior terminal elevators and after varying periods of storages in these terminals, depending on the supply of cars for reshipment, the grain is reloaded and forwarded to terminals at Port Arthur and Fort William or to points in Eastern Canada. The elevator operators on all grain billed from original stations before the 15th March expect this service to be carried out under the old rates, but the railways are insisting on charging the new rates on rebilling, claiming that the balance of the through rate include the 2 cents a hundred increase which went into effect on March 15. Our contention is that the contract was made when the car was billed at the original shipping point and that the old rate should apply to destination, with, of course, the usual diversion of 1 cent per 100 pounds in addition.”

The Quaker Oats Company wrote enclosing a notice of the Canadian Pacific Railway Company, which reads as follows:—

“All Agents:

“Considerable misunderstanding has arisen on the part of some of our agents as to the proper interpretation of our tariffs applying on grain and lumber milled in transit, and in order that uniform action be taken at all points, would say that the correct rate to be applied on the milled product is that in effect from the point of origin, or basing point, *in force at the time that product is forwarded from milling point.*”

And commenting on this states “that all Canadian carriers' transit tariffs provide a through rate from point of origin to destination, and under the interpretation of all milling-in-transit tariffs the rate applicable is the rate in effect at the time of shipment from point of origin.”

It is stated this applies with the possible exception of what is known as the local milling-in-transit rates and tariffs in Canada east of the lakes.

It is further submitted by the Quaker Oats Company that the increase "is not in accord with transit rules and regulations, and we, therefore, respectfully ask that the carriers be notified by you to desist from enforcement of a rule which is in conflict with the principles of transit as well as the law."

Communications have also been received from the Northern Grain Company. This company handles oats through the interior Government elevators at Moosejaw and Saskatoon. It is contended that the new tariffs concerned are contrary to the reading of the tariffs under which the oats moved "into store" in said elevators. It is stated that "if these oats were taken out of store for local use at Saskatoon or Moosejaw, the rate in effect prior to March 15 is charged, while these same oats reshipped in accordance with the express agreement, as called for in the tariffs mentioned, they are taxed a new rate of freight on entirely new tariffs." And it is stated that "all oats in said elevators, shipped in accordance with and moving under the tariffs named, carry with them the right to be reshipped at the rates and under the rules in effect by these tariffs, and not those put into effect by the railroad companies on March 15, 1918."

The essence of the complaint is the allegation that the railways have by their new tariff arrangements violated contractual obligations entered into prior to March 15, 1918, and which it is contended are still binding. What is involved is an examination of what obligations there were on the railways under the hitherto existing tariffs.

The tariffs concerned, while spoken of as concerned with milling in transit, cover also malting, storage, or cleaning-in-transit. The arrangement is hereinafter spoken of as milling-in-transit. The reshipment period out is limited to six months.

In connection with the milling-in-transit privilege, there are two phases to which reference may be made: first, outbound shipments to interior stations west of Fort William and Armstrong, Ont.; second, outbound shipments to Fort William, Armstrong, or points east thereof. The Canadian Northern tariff prior to March 15 provided as follows:—

"Under the rates to Port Arthur, Ont., Duluth, Minn., and Superior, Wis., shown herein, grain may be shipped to stations in the direct line of transit for milling, malting, storage or cleaning-in-transit, and reshipment made to Westfort, Fort William, Port Arthur, Ont., Duluth, Minn., or Superior, Wis., at the remainder of the through rate in effect on date of original shipment, from point of origin to final destination, plus 1 cent for extra terminal service."

The Canadian Northern tariff effective subsequent to March 15 provides as follows regarding outbound shipments to Fort William and east: "at the remainder of the through rate from point of origin to destination, plus 1 cent per 100 pounds."

In the case of interior stations west of Fort William, the provision in tariff prior to March 15, 1918, was: "the remainder of the through rate based on the actual mileage from point of origin to final destination will be applied" In the tariff now effective the same provision applies.

The Canadian Pacific tariff, effective prior to March 15, made the following provisions: (a) as to interior stations; (b) stations Fort William and east:—

(a) "On reshipment to interior points . . . the balance of the through rate based on the actual mileage from point of origin to final destination will be applied"

(b) ". . . and reshipment made . . . at the balance of the through rate from point of origin to final destination"

The Canadian Pacific tariff now effective, C.R.C. W-2303, provides *inter alia* "and reshipment made to Westfort, Fort William, Port Arthur, or points east thereof,

at the balance of the through rate from point of origin to final destination, effective on date of reshipment, plus 1 cent per 100 pounds for extra terminal service." The tariff also provides that in respect of interior points reshipment of the milled, malted, stored or cleaned product may be made on "the balance of the through rate effective on date of reshipment"

The Grand Trunk Pacific tariff effective prior to March 15 had for the outbound shipments, (a) to interior stations, and (b) to Fort William, Armstrong and points east thereof, the following provision:—

"(a) balance of through mileage rate based on actual distance from point of origin to final destination"

"(b) balance of through rate from point of origin of the grain"

By Grand Trunk Pacific Tariff C.R.C. No. 253, effective February 1, 1918, postponed by Supplement No. 1 until March 15, 1918, the provisions as to interior stations remain unchanged. In the case of shipments to Fort William, Armstrong and east, provision is made for "balance of through rate in effect at time of reshipment from point of origin" This is not indicated by any foot-note as being a change. Supplement No. 1 to above tariff has the same provisions as the main tariff. By Supplement No. 2, effective March 22, the provision as to through rate in effect at time of reshipment is made effective in both cases. The words so providing are marked and referred to in a foot-note as "Change."

In the submission made by the Canadian Pacific, it is stated that the cases decided by the Interstate Commerce Commission had no binding effect here and did not offer a proper guide from which to decide the matter, for the reason that the practice followed in the United States in connection with the handling of shipments stopped over in transit has been, generally speaking, quite different from that followed in Canada. It is stated it is the practice in the United States to transport the shipments from initial shipping point to final destination on a through bill of lading, with stop-over privilege endorsed thereon. As it pointed out later, the practice in Canada is not one of through billing; and it is contended this differentiates the situation in Canada from that in the United States, as dealt with in the decisions of the Interstate Commerce Commission.

It being urged that difference in rate practice, and contractual obligations thereunder, exists in Canada as compared with the United States, reference may be made to the findings of the Interstate Commerce Commission, and also to the practice on which these findings has been based.

The position taken by the Interstate Commerce Commission is that the rate in effect at the time the shipment began to move is the rate lawfully applicable. *Transit Case*, 25 I.C.C., 130, at p. 134. This decision refers also to the position which has been laid down that date of original shipment determines the rights, privileges and obligations attaching to that shipment throughout its transportation. *Interstate Remedy Co. v. American Express Co.*, 16 I.C.C., 436. Wherever by any transit arrangement through rates are applied, they must be as of the date of the first movement of shipment from the point of origin under such through rates. *Washburn-Crosby Milling Co. v. B. & O. South-Western R.R.*, in *Unreported Opinion A480*. The essence of the transit arrangement is a through rate. It is said an arbitrary sum exacted in addition to the through rate on a given commodity for the privilege of milling-in-transit becomes part of the aggregate through rate. *Listman Milling Co. v. C. M. & St. P. R. Co.*, 8 I.C.C., p. 65. *Koch vs. Penn. Rd. Co. et al*, 10 I.C.C., 675. The transit privileges are defensible only on the ground that the inbound and outbound shipments are part of the same movement. *In re Reduced Rates on Returned Shipments*, 19 I.C.C., 409, at p. 417. The same position has been held in *Red River Oil Co. vs. I. & P. Rd. Co.*, 23 I.C.C., 438, at p. 446, where it is stated in substance that once let it be conceded that the inbound and outbound movements of a commodity which is milled in transit are separate and distinct, the impropriety of applying through rates other than the established local rates is obvious.

While possibly open to being regarded as a *dictum*, it may be noted that the position which the commission has taken as to the through-rate arrangement has received judicial sanction. In the Circuit Court of Appeals, 6th Circuit, in *Lewis Leonhardt & Co., vs. Southern Ry. Co.*, 217 *Federal Reporter* 321, at p. 324, the following language is set out:—

“The essential object of the usual milling-in-transit privilege is to enable shippers to employ a method of transit which, but for the privilege would subject the material to local rates instead of entitling them to ultimate through rates. The through rate is applied later, upon the theory and condition that stoppage at the transit point was for some legitimate treatment of the material, and that the continuation of the transit desired is of the same material, its product or equivalent, to a through-rate destination

“Thus the object at last is to escape local rates and to secure a through rate; indeed apart from this object a milling in transit privilege would have no reason to exist.”

Such being the position of the Commission as to the obligation attaching to the milling-in-transit rate and as to the time governing the application of the rate, it is of value to note what phases of the situation it has recognized. If there had been only the question of the through rate from original destination on a through bill of lading, plus a stop-over charge endorsed thereon, it might well be that the decisions above summarized were on a set of facts distinguishable from what is involved in the present application. The Interstate Commerce Commission has used the following language regarding the milling-in-transit privilege:—

“Generally, in its application, raw material pays the local rates into the point of manufacture. When afterwards the manufactured product goes forward it is transported upon a rate which would be applicable to that product had it originated in its manufactured state at the point where the raw material was received for transportation, whatever has been paid into the mill being counted for in this final adjustment.” *Central Yellow Pine Assn. v. V. S. & P. Ry. Co., et al*, 10 *I.C.C.R.*, 193, at p. 213.

In a supplemental report on *The Transit Case*, 25 *I.C.C.*, 130, at p. 132-133, is used the following language:—

“Rates upon grain moving through a transit point upon a transit privilege and milled at the transit point are assessed in any one of several ways. Some of the carriers charge a local rate to the milling point and when the milled product is billed out refund the local rate and bill the product as such from point of origin of the grain or basing point to destination of product. Other carriers reduce the locals originally collected beyond the milling point to a figure which, added to the rate charged beyond the milling point, equals the through rate via the milling point from origin to destination. Again, the carrier may bill the grain at the local rate subject to adjustment to the through-rate point of origin or rate-basing point to destination by claim.”

In its decision in *the Transit Case*, 24 *I.C.C.*, 340, at p. 344, it quotes an extract from its Conference Rule No. 76-A, which, in part, reads as follows:—

“A milling, storage or cleaning-in-transit privilege cannot be justified on any theory, except that the identical commodity or its exact equivalent or its product is forwarded from the transit point under the application of the through rate from original point of shipment”

Another statement of principle bearing on this is to be found in *Clinton Sugar Refining Co. vs. C. and N. W. Ry. Co.*, 28 I.C.C., 354, at p. 368, which sets out as follows:—

“Ordinarily, when milling-in-transit is permitted, the full local rate is quoted when the shipment moves into the milling point. If the product never moves out or moves out in some direction to which no through rate exists, no further adjustment is required; but when the product moves to a destination point to which there existed a through rate from the point of origin via the milling point, the subsequent freight charge from the milling point is so adjusted as to make the entire charge that from the point of origin to final destination, plus any milling-in-transit penalty which may be imposed.”

Without multiplying instances, reference may be made to the practice as recognized in *Diamond Mills vs. B. and M. Rd. Co.*, 19 I.C.R., 313, where grain was shipped into Buffalo at the full local rate, and when the product was shipped out a bill of lading was issued correcting the rate, so that the total rate paid was that applicable from the point of origin to point of destination, plus the milling-in-transit penalty. In the northwestern transit tariffs generally, it is provided that upon receipt of grain at the transit point the through rate to the final destination is to be paid, and such destination indicated. In *re Substitution of Tonnage at Transit Points*, 18 I.C.C.R., 280, at p. 295. In *the matter of Fabrication in Transit Charges*, 29 I.C.C., 70, at p. 73, reference was made to two-rate methods, it being stated that upon fabrication of the steel the shipments went forward at the balance of the through rate, from point of manufacture to point of ultimate destination, plus a charge for stoppage-in-transit, while in other cases, instead of providing for the movement forward from the fabricating point at the balance of the through rate, provision was made that upon surrender of paid expense bills for the local charges in and out of the fabricating plant, the difference between the amount of the local rates and the amount of the through rate plus the transfer charge would be refunded.

On consideration of what has been set out, it appears that in arriving at its conclusions the Interstate Commerce Commission had before it, as one phase of the milling-in-transit problem, the same practice as is involved in the tariffs under review. Without attempting to make an exhaustive analysis, the diversity of practice in this respect which has been before the Interstate Commerce Commission is indicated in the following:—

- (1) Local rate in and adjustment in reshipping to basis of through rate from point of origin;
- (2) Reduction of the locals beyond the milling point to a figure which added to the rate charged beyond the milling point equals the through rate via the milling point from origin to destination;
- (3) Through rate from original point of shipment plus stop-over charge;
- (4) Payment of the locals in and out and subsequent adjustment to through rate basis, plus transfer charge.

In arriving at its conclusion as to the contractual obligations involved and the time from which the through rate runs, the Interstate Commerce Commission has held that through the divergent forms of transit practice there runs the common element of a through rate on a continuous movement.

The question of tariff construction involved is on what date the through rate is effective—whether the date of origin or of reshipment.

From the wording of C.N.R. Tariff W-1033, it is clear that as to the movement Fort William and east there was an offer, and that as soon as there was an acceptance by the shipper, by moving grain under said tariff, there was a contractual obligation created on the part of the railway to carry the milled product out, within the period limited by tariff, at the remainder of the through rate effective on date of original shipment from point of origin.

The wording in case of shipments to interior points is different, and its effect must be considered as controlled by the principle on which, milling-in-transit is based.

Reference by the Northern Grain Company to the fact that if oats were taken out of storage for local use in Saskatoon or Moosejaw, the rate in effect prior to March 15 would apply, that is where the inbound movement was prior to that date, draws attention to the way the traffic is handled.

Under the tariffs concerned, the grain is carried in at the appropriate rate, on a bulk grain bill of lading. The grain when it arrives at destination may be consumed locally. If so, there is no question of any contract beyond. If the stored or cleaned grain is shipped out, it moves out rebilled on a bulk grain bill of lading. If the grain is milled into flour, oatmeal, or other grain product, the product is shipped out on the ordinary form of straight or order bill. Here, again, there is a rebilling.

In essence, the contention of the Canadian Pacific is that under the milling-in-transit arrangement there are two separate and distinct contracts of carriage, and that no other rate arrangements accrued until the date of reshipment, and that consequently when there is a shipment out of the stored or cleaned or milled product the through rate applicable is the through rate from point of origin as of the date of the shipment out.

The point involved is a new one so far as the Board is concerned. Normally, and when there is no variation of rates, the rate of the date of reshipment is the rate of the date of original shipment; consequently no difficulty arises. In effect, the contention is that the words in the new tariffs, limiting the through rate as of the date of reshipment, in no way vary or modify the hitherto existing practice and obligation.

As indicative of its construction of the obligation, the Canadian Pacific Railway Company states that when the grain mileage rates were reduced under the Board's order in the Western Rates Case, the shipper at the transit point was given the advantage of the lower rate on reshipment of the product.

What was done by the Canadian Pacific in this connection cannot be taken as conclusive of the obligation of the railway under its tariffs. Whether it was granted at the railway's own volition or as a result of urgent request does not appear. What is apparent is that there was no adjudication by the Board as to the principle, and that is what must now be dealt with.

Decisions of the Board have held that the milling-in-transit arrangement is a privilege. Subject to the conditions set out in the tariffs, the railways have authorized the utilization of the milling-in-transit arrangement within a period of six months from date of arrival at the milling or storage point. Does this in any way tie their hands in respect of grain which has moved prior to an advance in through rates but which has not moved out within the six months' period, and during which time an increase in rates has become effective?

It is not necessary to labour the position that the condition precedent to the product enjoying the through-rate arrangement is a local haul in at a local rate and a subsequent milling-in-transit within the transit point. The tariff provisions provide for the two transactions being tied up together. Taking tariffs now effective, the Canadian Northern provides, both in the case of shipments to Fort William and east and in the case of shipments to interior points, that "on reshipment of grain or grain product under the conditions outlined above, receipted expense bills covering charges paid on the inward shipment must be taken up and cancelled. On the outward way-bill particulars covering inward shipment must be shown as follows: shipping-point, date of expense bill covering inward shipment, way-bill number, car number, description of commodity."

The Canadian Pacific, with slight verbal differences, requires the same particulars. The same particulars are also required in the case of the Grand Trunk Pacific.

The product standing by itself would move out from the point of milling on the appropriate local rate. Recognition of this as the normal condition is set out in the provision that under the milling-in-transit arrangement if the product does not move out within the period limited by tariff, or if it does not move in the direct line of transit, it is subject to the local rate out.

While there are two contracts of carriage, the essence must be looked to; and what is apparent is that the separate billings are part of one through rate transaction which, notwithstanding the period of time intervening, is treated as a continuous movement.

It is apparent that a condition precedent to the product being taken out from the local rate and placed under the through rate is an antecedent local haul at a local rate and the subsequent milling of the grain. Under these circumstances, while the product goes out on a new and distinct billing and is in form moving on a separate contract of carriage, it is manifest that the distinction is one of form. What is concerned is a through-rate arrangement.

If the milling-in-transit is utilized, it properly relates back to the time when the original movement began. That is, the date of the original movement fixes the date from which the through rate runs. This rate is applicable within the time limited by the tariff.

The position taken as to the liability of the companies under their tariffs prior to March 15 makes clear that the words limiting the through rates as of date of reshipment of the product cannot have any retroactive force as to the through-rate arrangements which may accrue under the antecedent tariff. The transit arrangement being a privilege, changes in its incidents may, subject to the inhibitions as to discrimination, be made. But these can be effective only from the effective date of the tariff. The fact that for long years the railways did not deem it necessary to put words into the tariff referring to date of reshipment, and the further fact that they were inserted at a time when a rate increase was allowed, seem to me to mean more than an attempt to add to the clarity of the tariff. They seem to me to be concerned with an attempt to delimit the liability of the railway.

The tariffs, as in existence prior to March 15, were not so limited. The result is that as to shipments prior to March 15, under the tariffs then effective, the shippers have the right to the milling-in-transit privilege at the through rates then in existence, and for the milling-in-transit period as defined by those tariffs.

May 11, 1918.

Application of the Brantford and Hamilton Electric Railway Company for an Order permitting it to file tariffs providing for a general advance in tolls for the carriage of freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File 28439.10.

JUDGMENT.

MR. COMMISSIONER McLEAN:

Application is made by the Brantford and Hamilton Electric Railway Company for authorization to put into force the same increases in freight rates as have been authorized in the case of steam railways, as well as in the case of certain electric lines. It is represented that the railway has no agreements with municipalities, so holding down the limits of freight rates as in any way to conflict with the present application.

The railway is twenty-three miles in length and has a capitalization, on the basis of stock and bonds, of \$41,739.13 per mile. Its earnings per mile on the basis of net earnings from operation, less taxes, have been, for the years 1915-17 as follows:--

1915.	\$1,175
1916.	1,199
1917.	2,207

The London and Port Stanley Railway, with substantially the same mileage (23.6 as compared with 23), had in 1917 net earnings from operation amounting to \$4,144 per mile. Making deduction for taxes in accordance with the computations in the decision in the *London and Port Stanley Railway* application, the net earnings from operation, less computed taxes, amounted to \$3,905 per mile.

The financial situation of the applicant railway for the years 1915 to 1917 is summarized in the following statements:—

	1915.	1916.	1917.
Net earnings from operation	\$31,108 73	\$32,414 44.	\$51,916 61

Deductions are to be made for taxes and mileage to city and government as follows:—

	1915.	1916.	1917.
Taxes	\$3,500 65	\$4,246 10	\$4,559 55
Mileage to city and government	579 90	579 90	579 90
	<hr/> \$4,080 55	<hr/> \$4,826 00	<hr/> \$5,139 45

Deducting the above, the following result appears:—

	1915.	1916.	1917.
Net from operating less taxes	\$27,028 15	\$27,588 44	\$50,777 16

The company has \$300,000 of common stock outstanding on which no dividends were paid in the years in question. There are also \$660,000 of funded debt outstanding, on which interest at 6 per cent, or \$39,600, has been paid yearly during the years in question.

The charges accruing in floating debt for the years in question are as follows:—

1915	\$93,025 65
1916	44,378 49
1917	47,154 70

For the year 1915, the net from operating, less taxes, was insufficient to meet the charges on the funded debt. In addition to the interest on the unfunded debt, there was a deficit at the beginning of the year of \$341,882.45. For 1916, the net from operating less taxes was insufficient to meet the fixed charges. There was, in addition, the question of the interest on the floating debt and, in addition, a deficit at the beginning of the year of \$285,492.40. For 1917 the deficit at the beginning of the year was \$341,882.45.

In a summary way, the situation is as follows:—

	1915.	1916.	1917.
Balance after deduction of taxes and payment of fixed charges	\$ 12,571 85	*\$12,041 56	*\$11,177 16
Deficit when fixed charges and interest on floating debt for year deducted	105,597 50	56,390 05	35,977 54
* Deficit.			

If there is omitted from consideration all reference to the question of stock or floating debt, there remains the funded debt which represents a capital sum of \$28,286 per mile as against the sum of \$74,555 per mile which, as set out in the *London and Port Stanley Railway* decision, "it would certainly not be unfair to the public to place the amount of capital on which the commission operating for the city ought to earn a return . . ." If the same basis of computation, as was applied in the foregoing case, were applied in the case of the funded debt alone of the applicant railway, then the Brantford and Hamilton Railway Company, to properly carry its investment, should, over and above operating expenses and taxes, earn \$48,840 instead of the \$11,177.16 as shown.

For the year 1917, the gross earnings from operation were \$29,207.31 greater than in 1916, while there was an increase of \$23,502.17 in net. It is set out in the application that the increase in net earnings from operation in 1917 was brought about by the fact that a connection had been made with the Lake Erie and Northern at Brantford, which had resulted in a considerable increase in passenger earnings. Of the increase in gross above set out, \$4,555.63 is attributable to freight. Applying to the gross earnings from freight the general operating ratio of the railway in 1917, the freight portion of the increase in net would be \$1,634.96; that is to say, with 12.6 per cent of the gross earnings for the year in question, freight contributed 5.5 per cent of the increase in net earnings from operation.

The general part played by the freight business for the years in question is set out below:—

Year.	Total Tons Carried.	Freight Earnings Gross.	Per cent of Freight
			Earnings to Total Gross Earnings.
1915..	3,646	\$15,272 15	11.4
1916..	5,322	17,052 22	12.0
1917..	6,026	21,607 85	12.6

Conditions in respect of material costs are comparable with those on other electric railways whose applications have been before the Board. In the period January 1, 1915, to January 1, 1918, the costs for equivalent quantities of supplies have doubled. There have been increases in labour costs. The total number of employees in 1917 is less than in 1915, the figures being 68 and 73, respectively. At the same time, the aggregate paid for salaries and wages is \$8,115.96 greater.

A case for the increase in freight rates as asked for has been made out and order may go, subject to compliance with the statutory requirements as to publication of standard tariffs.

May 29, 1918.

The Chief Commissioner concurred.

ORDER No. 27270.

In the matter of the application of the Brantford and Hamilton Electric Railway Company, hereinafter called the "applicant company," for an order permitting it to file tariffs providing for a general advance in tolls for the carriage of freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439.10.

THURSDAY, the 30th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That the applicant company be, and it is hereby, authorized to increase its freight rates, except on coal and coke, by 15 per cent, and its rates on coal and coke by 15 cents a ton.

That the increased rates herein authorized shall not become effective until the company has complied with the requirements of section 327 of the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

Application of G. F. Sterne & Sons, Brantford, Ont., per Canadian Manufacturers' Association, for an order, requiring railway companies to reduce the present rating on stove putty when in bulk in barrels, as provided for in item 24, page 126, Canadian Classification No. 16, 18, fourth class, and to accept and carry asbestos cement at the ratings provided for in item 3, page 95, Canadian Freight Classification No. 16.

File No. 19367.72.

JUDGMENT.

The DEPUTY CHIEF COMMISSIONER:

The application is two-fold. In the first place, it asks for a lower classification on stove putty shipped in barrels, and in the second place it claims that railway companies should carry "asbestos cement," as manufactured by Messrs. G. F. Sterne & Sons, of Brantford, Ont., at the ratings provided for in item 3, page 95, Canadian Freight Classification No. 16.

Adverting to the first portion, complainants failed to press their claim at the hearing, and nothing being on record to show that stove putty shipped in barrels should be given a lower rating than that applying when shipped in boxes or cans, it is hereby dismissed.

As to the other portion of the application:—

Referring to Canadian Freight Classification No. 16, I find at page 95, item 3, as follows:—

Asbestos cement, L.C.L. 4; C.L. 10; item 48, as follows:—

Cement, N.O.S., in sacks or barrels, L.C.L. 4, C.L. 10.

At page 125, item 90, as follows:—

Cement, stove, in cans or boxes, L.C.L. 3.

At page 126, item 24, as follows:—

Putty, stove, in cans or boxes, L.C.L. 3.

The question before us has nothing to do with the principles underlying the classification scheme; it simply concerns the justification in the railways rating the commodity styled by the applicants "asbestos cement," the way they did.

Now what is this asbestos cement as manufactured by Messrs. Sterne & Sons, and conveyed by the railways under item No. 3, page 95, of Freight Classification No. 16, between the years 1901 and 1916?

It is a product which Mr. Walsh describes as follows: "The formula consists of 20 per cent silica of soda; 25 per cent of that 20 per cent is water; the balance is made up of 45 per cent of fire-clay and common sand; the remaining 35 per cent is asbestos." See p. 578, vol. 280, Notes of Proceedings.

This so-called asbestos cement contains only 35 per cent of asbestos fibre. A sample was produced at the hearing but is not on file.

It is at all events shipped in plastic form and is a higher-priced article than the Portland cement and asbestos cement shipped in a dry state.

Although it may not be essential to know what this asbestos cement is used for, it may, however, help in establishing a comparison with other products as rated by the railways.

It is not used as a rule for building purposes; it is used in connection with furnaces, stoves and steam heating apparatus. It is advantageous for setting up and repairing furnaces, ranges, heaters and stoves. It is superior to stove putty as the putty will burn out of the joint and the cement will not.

It is primarily used for furnaces and stoves. Seeing, therefore, its use as a putty and its composition, I fail to see how it can be properly classified under the heading "asbestos cement," as found at p. 95 of the classification.

The railways until lately did carry it as such, but an error proves nothing and can always be remedied.

The rate concerning asbestos cement dates back to the year 1891, and was not made evidently for the purpose of giving an L.C.L. rating to the commodity shipped by the complainants since they first began shipping in 1901 or 1902.

By labelling their goods as they did, Messrs. Sterne & Sons have had the benefit of a low rating; but the railways have now found this was done through misapprehension and they are entitled to put matters aright.

The application is, therefore, dismissed under both heads and an order will go accordingly.

OTTAWA, May 31, 1918.

Mr. COMMISSIONER McLEAN:

On consideration of the evidence submitted as to the composition and use of the article shipped by the applicant as "asbestos cement" and on consideration of what has been submitted regarding the classification of stove putty, it does not appear that the reduction in classification ratings as asked for has been justified, and I, therefore, agree in the disposition recommended by the Deputy Chief Commissioner.

Commissioner Goodeve concurred.

June 6, 1918.

ORDER No. 27222.

In the matter of the complaint of the Lake Superior Paper Company and the Spanish River Pulp and Paper Mills, of Sault Ste. Marie, Ont., that the Canadian Pacific Railway Company's special tariff on wood-pulp, C.R.C. No. E-3357, effective January 10, 1918, in so far as rates from Sturgeon Falls and Espanola to destinations in Ohio, Indiana, Michigan, Illinois, and the western portions of Pennsylvania and the State of New York are concerned, fails to preserve the pre-existing relationship with respect to the rates from Ottawa to the same territory.

File No. 26901.

WEDNESDAY, the 15th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, March 19, 1918, the complainant companies, the Canadian Freight Association and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged, and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, required to restore the pre-existing relationship between the international rates on wood-pulp from Ottawa on the one hand and Sturgeon Falls and Espanola on the other, by publishing and filing the same rates from Sturgeon Falls and Espanola as are concurrently in effect from Ottawa through the same frontier gateways to destinations in Central Freight Association territory.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27221.

In the matter of the Order of the Board No. 26140, dated May 22, 1917, directing the Canadian Pacific Railway Company to construct a standard No. 2 station building at Hayter, Alta; and the application of the said railway company for approval of plan, dated Moosejaw, March 6, 1918, showing the location of the proposed station building on file with the Board under file No. 24812.

SATURDAY, the 18th day of May, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board, and reading what is filed on behalf of the rural municipality of Sifton No. 391,—

It is ordered: That the said plan showing the proposed location of the Canadian Pacific Railway Company's station building at Hayter, Alta., on file with the Board under file No. 24812, be, and it is hereby, approved; the station building to be constructed in accordance with the company's A-2 standard plan on file with the Board.

D'ARCY SCOTT,
Assistant Chief Commissioner.

GENERAL ORDER No. 236.

In the matter of the application of the Trainmen's Association of Canada, for the revision of Order No. 5888, dated December 16, 1908, making provision for the protection of railway employees.

File No. 1750.

MONDAY, the 20th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C. *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing this application, and upon the reports of the Chief Operating Officer and the Chief Engineer of the Board,—

It is ordered as follows:—

1. Whereas subsection 3 of section 264 of the Railway Act provides that,—

“There shall also be such a number of cars in every train equipped with power or train brakes that the engineer of the locomotive drawing such train can control its speed, or bring the train to a stop in the quickest and best manner possible, without requiring brakemen to use the common hand brake for the purpose.”

Therefore, at least eighty-five per cent (85%) of the number of cars in every train shall be equipped as above required.

2. When more than one engine is attached to a train, the engineer of the leading engine shall operate the brakes.

3. No light engine, nor two or more light engines coupled, when the movement is either on a single track or against the current of traffic on a double track, shall be run a greater distance than twenty-five miles in any one direction without a conductor appointed for service as such and possessed of the qualifications set out in paragraph (b) of section 5 of this order.

4. No railway company shall permit any employee to engage in the operation of trains, or handle train orders, without first requiring such employee to pass an examination on train rules and undergo a satisfactory eye and ear test by a competent examiner.

5. (a) Locomotive engineers must be at least twenty-one years of age; undergo a satisfactory eye and ear test by a competent examiner; and pass an examination on train rules and regulations and the proper care and operation of locomotives and air brakes.

(b) Conductors must be at least twenty-one years of age; undergo a satisfactory eye and ear test, and pass an examination on train rules and regulations and the operation of air brakes.

(c) Telegraph or telephone operators engaging in the operation of trains or handling train orders must be at least eighteen years of age; write a legible hand; and pass an examination on train rules and regulations. Telegraph operators must be able to send and receive messages at the rate of not less than twenty words a minute.

(d) Train despatchers must be at least twenty-one years of age, be familiar with the line over which they have charge, and pass an examination on train rules and regulations.

(e) Railway companies shall (within ninety days from the date of this order) file with the Board a copy of each examination paper for the examinations herein required to be passed by the employees of such railway company.

6. All railway companies shall strictly conform to the rules and regulations from time to time approved by the Master Car Builders' Association, governing the loading of lumber, logs and stone upon open cars, and the loading and carrying of structural material, plates, rails and girders; and no material of any kind shall be carried on the roofs of cars.

7. (a) All open drains crossing tracks in railway yards shall be safely covered for at least five feet from the gauge side of each rail, except in times of flood, when temporary open drains may be provided if necessary.

(b) No semaphores, signals, poles, high or intermediate switchstands, or piles of material, erected or placed in future, shall be nearer than six feet from the gauge side of the nearest rail.

(c) No structure, except mail cranes, which shall be erected and maintained as directed by Order of the Board No. 5647, dated November 20, 1908, over four feet high shall hereafter be placed within six feet from the gauge side of the nearest rail without first obtaining the approval of the Board.

(d) Water stand-pipes shall not be nearer than two feet and six inches from the widest engine cab, and the spout of the stand-pipe shall, when not in use, be fastened parallel with main track, and enginemen are required to see that this is done after using any such pipe.

8. Every person or company offending against any of the foregoing provisions shall forfeit and pay the sum of fifty dollars (\$50) for every such offence.

9. Orders Nos. 5888 and 12225 (General Orders Nos. 22 and 65), dated respectively December 16, 1908 and November 9, 1910, made herein are hereby rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27226.

In the matter of the application of the Quebec Railway, Light and Power Company for approval of its Standard Passenger Tariff of Maximum Mileage Tolls, C.R.C. No. 34.

File No. 1306.1.

TUESDAY, the 21st day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The said standard passenger tariff having been filed on the basis permitted by the Board in its Order No. 27208, dated May 7, 1918,—

It is ordered: That the applicant company's said Standard Passenger Tariff of Maximum Mileage Tolls, C.R.C. No. 34, dated to become effective June 2, 1918, be, and the same is hereby approved; the said tariff, with reference to this order, to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27241.

In the matter of the order of the Board No. 23657, dated May 4, 1915, directing the Ottawa and New York and the Canadian Pacific Railway Companies to time the running of their passenger trains that an opportunity may be had for the transfer, within a reasonable time, of passengers at Finch, Ont., to and from the passenger trains of the said railway companies.

File No. 20632.

TUESDAY, the 21st day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Pacific and the Ottawa and New York Railway Companies be, and they are hereby, required forthwith to provide the following train service, namely:—

1. *Morning Connections.*

Canadian Pacific Railway Company's train No. 30 from Perth, Ont., due at Finch at 9.47 a.m., for Montreal.

Ottawa and New York Railway Company's train No. 21 from Ottawa, due at Finch at 9.47 a.m., for Santa Clara.

Ottawa and New York Railway Company's train No. 20 from Tupper Lake, due at Finch at 9.47 a.m., for Ottawa.

2. *Afternoon Connections.*

Canadian Pacific Railway Company's train No. 20 from Toronto, due at Finch at 5.02 p.m., for Montreal.

Ottawa and New York Railway Company's train No. 23 from Ottawa, due at Finch at 5.50 p.m., for Tupper Lake.

Ottawa and New York Railway Company's train No. 22 from Santa Clara, due at Finch at 5.50 p.m., for Ottawa.

The said trains to be held twenty minutes when there are three or more passengers for the connecting train, if by so doing connection will be made.

And it is further ordered: That the Canadian Pacific and the Ottawa and New York Railway Companies advise the agent at Finch as to the number of passengers on their trains desiring to make the connection and the time of arrival at Finch; and that Order No. 23657, dated May 4, 1915, as amended by Order No. 23738, dated May 25, 1915, and Order No. 26996, dated February 16, 1918, be, and they are hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27271.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Canadian Northern Railway Company, hereinafter called the "applicant company," for authority to remove its agent at Malvern station, in the township of Scarboro, province of Ontario.

File No. 4205.151.

TUESDAY, the 21st day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the residents of Malvern and vicinity, in the township of Scarboro, province of Ontario; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further order, to remove the regular agent at Malvern station, in the said township of Scarboro, province of Ontario, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean and heated for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27232.

In the matter of the application of the Crow's Nest Southern Railway Company, hereinafter called the "applicant company," under the Amending Act, 7-8 Edward VII, section 11, chapter 61, for approval of by-laws dated June 5, 1916, authorizing H. H. Brown, general freight agent, and C. E. Stone, passenger traffic manager of the company to prepare and issue tariffs of tolls to be charged on the said railway.

File No. 5047.11.

WEDNESDAY, the 22nd day of May, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-laws be, and they are hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27233.

In the matter of the application of the New Westminster Southern Railway Company, hereinafter called the "applicant company" under the Amending Act 7-8 Edward VII, section 11, chapter 61, for approval of a by-law dated June 2, 1916, authorizing H. H. Brown, general freight agent, and C. E. Stone, passenger traffic manager of the company, to prepare and issue tariffs of tolls to be charged on the said railway.

File No. 5047.10.

WEDNESDAY, the 22nd day of May, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-law be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27235.

In the matter of the application of the Manitoba, Great Northern Railway Company, hereinafter called the "applicant company," under the amending Act 7-8 Edward VII, section 11, chapter 61, for approval of a by-law dated May 5, 1916, authorizing H. H. Brown, general freight agent, and C. E. Stone, passenger traffic manager of the company, to prepare and issue tariffs of tolls to be charged on the said railway.

File No. 5047.13.

WEDNESDAY, the 22nd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-law be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27236.

In the matter of the application of the Victoria Terminal Railway and Ferry Company, hereinafter called the "applicant company," under the amending Act 7-8 Edward VII, section 11, chapter 61, for approval of a by-law dated May 22, 1916, authorizing H. H. Brown, general freight agent, and C. E. Stone, passenger traffic manager of the company, to prepare and issue tariffs of tolls to be charged on the said railway.

File No. 5047.9.

WEDNESDAY, the 22nd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-law be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27237.

In the matter of the application of the Victoria and Sidney Railway Company, hereinafter called the "applicant company," under the amending Act 7-8 Edward VII, section 11, chapter 61, for approval of a by-law dated May 22, 1916, authorizing H. H. Brown, general freight agent, and C. E. Stone, passenger traffic manager of the company, to prepare and issue tariffs of tolls to be charged on the said railway.

File No. 5047.8.

WEDNESDAY, the 22nd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-law be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27242.

In the matter of the application of the Cumberland Railway and Coal Company, hereinafter called the "applicant company," under sections 327 and 331 of the Railway Act, for approval of a standard passenger tariff to supersede its Standard Passenger Tariff C.R.C. No. 3 on file with the Board, and for approval of a Standard Freight Mileage Tariff C.R.C. No. 6 to supersede its Standard Mileage Freight Tariff C.R.C. No. 1 on file with the Board.

File No. 8098.

THURSDAY, the 23rd day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the applicant company's Standard Freight Mileage Tariff C.R.C. No. 6, filed with the Board under said file No. 8098, be, and it is hereby, approved subject to and upon the condition that the applicant company publish and file carload mileage commodity rates on the following articles at the rates authorized by the Board in the so-called Eastern Rates Case as increased under the Board's General Order No. 212, dated January 15, 1918, in the 15 Per cent Case, so-called; scale "A" to apply to all grains, also to grain products as enumerated in the proposed schedule filed by the applicant company's general traffic and transportation manager under cover of his letter of May 8, 1918; scale "B" to apply to lumber, lath and shingles; scale "C" to building sand, gravel and rubble, cobble and field stone; and scale "D" on

other rough or partly dressed building stone, common brick and lime; the said rates to be as follows in cents per 100 pounds:—

Distances.	Scale A.		Scale B.	Scale C.	Scale D.
	C.L.	L.C.L.	C.L.	C.L.	C.L.
To 5 miles.....	3	4½	3½	2¾	3½
To 10 ".....	3½	6	4	2¾	3½
To 15 ".....	4	7	4½	3¼	4
To 20 ".....	4	7	4½	3¼	4
To 25 ".....	5	8	5	3¾	4½
To 30 ".....	5	8	6	3¾	4½
To 35 ".....	5	9	6½	4¼	5

It is further ordered: That the applicant company be, and it is hereby permitted to file for the approval of the Board a standard maximum passenger tariff of one-way fares on the basis of 3.45 cents per mile.

And it is further ordered: That the standard freight mileage tariff herein approved may be made effective after it has been published, with a notice of this approval, in at least two consecutive weekly issues of the *Canada Gazette*, as required by section 327 of the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27246.

In the matter of the complaint of the Retail Merchants' Association of Canada, Provincial Coal Section of Ontario, against the reconsignment switching charges assessed by the Canadian Pacific Railway Company for the replacement of cars loaded with coal from the United States which is not consigned in the first instance direct to the unloading point, and the consideration of the further submissions of the Canadian Manufacturers' Association and the Toronto Board of Trade, also of Robin Boyle, representing the shippers of crushed stone under similar circumstances.

File No. 6713.135.

SATURDAY, the 25th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C. *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, April 13, 1917, and in Ottawa, July 5, 1917, the Canadian Manufacturers' Association, the Montreal and Toronto Boards of Trade, the Coal Dealers' Association, the Dominion Millers' Association, and the shippers of crushed stone being represented at the hearing, and what was alleged and upon reading the further submissions filed,—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27254.

In the matter of the application of the Sorel Chamber of Commerce, in the province of Quebec, for an order directing the Québec, Montréal and Southern Railway Company to establish the same train service between Montreal and Sorel as was in effect previous to January, 1918.

File No. 18727.4.

TUESDAY, the 28th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Quebec, Montreal and Southern Railway Company be, and it is hereby, required to restore the train service in effect prior to January, 1918, between Montreal and Sorel, such service to be put into effect on the 10th day of June, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27255.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove the station agent at Axford, in the province of Saskatchewan.

File No. 4205.147.

TUESDAY, the 28th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the rural municipality of Brokenshell, No. 68, the Axford Grain Growers' Association, and the Saskatchewan Grain Growers' Association, the applicant company undertaking to provide arrangements for housing all less than carload freight and express matter, and for the handling of draymen's charges by the agent at Khedive,—

It is ordered: That subject to the due performance of the said undertaking, the applicant company be, and it is hereby authorized, pending further order, to remove the regular agent at Axford, in the province of Saskatchewan.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27261.

In the matter of the application of the corporation of the city of Trail, in the province of British Columbia, hereinafter called the "city," for an enlargement of the area in the said city, as fixed by the order of the Board No. 25954, dated March 22, 1917, within which the tolls of the Dominion Express Company include delivery.

File No. 4214.181.

THURSDAY, the 30th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading the submissions filed on behalf of the city and the company, an extension of the limits fixed by the order of the Board No. 25954 having been proffered on behalf of the company and accepted by the city,—

It is ordered: That, until further order of the Board, the tolls of the company include the delivery of express freight on both sides of the undermentioned thoroughfares in the city of Trail, that is to say:—

Bay avenue, from Victoria street to Aspen street.
 Cedar avenue, from Victoria street to Portland street.
 Pine avenue, from Victoria street to Helena street.
 Portland street, from Cedar avenue to Bay avenue.
 Helena street, from Pine avenue to Columbia river.
 Spokane street, from Pine avenue to the Columbia river.
 Eldorado street, from Pine avenue to the Columbia river.
 Farwell street, from Pine avenue to the Columbia river.
 Victoria street, from Tamarac avenue to the Columbia river.
 Tamarac avenue, from Victoria street to Third street.
 Third street, from Tamarac avenue to Rossland avenue.
 Rossland avenue, from Third street to the point where the avenue and the Canadian Pacific Railway diverge, including the connecting portion of Nelson street.

And it is further ordered: That the said Order No. 25954, dated March 22, 1917, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27262.

In the matter of the order of the Board No. 22160, dated July 8, 1914, made upon the application of Henry Ray, of the township of March, in the province of Ontario, for an order directing the Canadian Northern Ontario Railway Company to provide and construct a suitable farm crossing where its railway intersects the applicant's farm in the south half of lot 25, concession 3, in the said township of March; and in the matter of the application of the said Henry Ray for an order authorizing the withdrawal from the Bank of Toronto, the chartered bank in which the amount was deposited in pursuance of the terms of the order of the Board No. 22294, dated July 24, 1914, of the sum of \$500 with accrued interest from the date of such deposit.

File No. 3561.194.

THURSDAY, the 30th day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company,—

It is ordered: That the applicant be, and he is hereby, authorized to withdraw from the Bank of Toronto the said sum of \$500 with the accrued interest thereon from the date of its deposit with the bank.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27272.

In the matter of the application of the Express Traffic Association of Canada, on behalf of the express companies subject to the jurisdiction of the Board, under section 340 of the Railway Act, and such other sections as may be applicable thereto, for an order approving the form of Bill of Lading issued by the Government of the United States of America for use in respect of all shipments of munitions, war materials, and supplies by or on behalf of the said Government, or any of its contractors; and providing that notwithstanding the provisions of the order of the Board No. 12953, dated February 10, 1911, the form herein referred to may be used by all such express companies in respect of such shipments.

Case No. 1503.

TUESDAY, the 4th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application and its appearing that the said Bill of Lading is made subject to the conditions of the Bill of Lading approved by the order of the Board No. 12953, dated February 10, 1911,—

It is ordered: That the form of Bill of Lading issued by the Government of the United States of America for use in respect of all shipments of munitions, war materials, and supplies by or on behalf of the said Government, or any of its contractors, copies of which are on file with the Board under Case No. 1503, be, and it is hereby, approved, and that, notwithstanding the provisions of the said Order No. 12953, dated February 10, 1911, the form herein approved may be used by all such express companies in respect of the said shipments of munitions, war materials, and supplies.

H. L. DRAYTON,
Chief Commissioner.

SUPPLEMENT No. 2 TO CIRCULAR No. 110.

File 45. Accident Reports to the Board.

June 6, 1918.

I am directed by the Board to request that railway companies place before their employees a copy of Supplement No. 1 to Circular No. 110, instructing employees to report to the Board by telegraph all accidents referred to therein; such action to be taken at the same time as their telegraphic report is made to the company.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, July 1, 1918

No. 7

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Complaint of Auguste Lemieux, K.C., of Ottawa, Ont., against the practice of the Bell Telephone Company of charging a toll of ten cents for local calls in Montreal from public pay stations on a two number basis when there is no conversation.

File No. 3574.199.

JUDGMENT.

The CHIEF COMMISSIONER:

Mr. Lemieux's complaint is two-fold: In the first instance he challenges the right of the Bell Telephone Company to exact a fee of ten cents when, owing to the absence of the person from his house or office, no conversation in fact takes place; and, secondly, on the ground that if the tariffs permit this charge, they should be cancelled.

Dealing, in the first instance, with the first ground of complaint, the tariffs leave no room for doubt; the fee was properly chargeable under them, and it was the duty of the company, therefore, to collect it.

On the second ground, I have had the opportunity of reading the considered judgment of Mr. Commissioner Boyce. I agree in the conclusions he arrives at.

I would, therefore, issue an order cancelling the provision of the tariff complained of, and directing the company to file a tariff fixing the rate for local messages from coin boxes or attended public telephone stations inside the base-rate areas at five cents each; or from coin box public telephones outside the base area at ten cents each.

As I understand it, no reference is necessary to attended public telephone stations outside the base area, as none are maintained. If there be any, the direction already made as to coin-box public telephones outside the base area should apply to them.

I would stay the operating effect of the order cancelling the provision complained of for fourteen days after the issue of formal order carrying into effect Mr. Commissioner Boyce's judgment, thus enabling the telephone company to file in the meantime a proper substituted tariff.

OTTAWA, June 5, 1918.

The Deputy Chief Commissioner and Commissioner McLean concurred.

Mr. COMMISSIONER BOYCE:

The Bell Telephone Company's Tariff C.R.C. 3100, section 19, 1st revised sheet, issued 15th December, 1917, effective 1st January, 1918, provides:—

“ Messages.

“ A local message is a message five minutes or less in duration between points within the local service area, specified in the individual exchange tariff.

"Local messages from coin-box public telephones *or attended public telephones* are on a two-number basis.

"Local messages from coin-box public telephones inside base-rate areas are charged for at 5 cents each, and from coin-box public telephones outside base rate areas *and from attended public telephones* at 10 cents each.

This tariff varies original tariff C.R.C. No. 3100, section 19, issued 1st September, 1917, effective October 1, 1917, which provided, *inter alia*:—

"Local messages from coin-box public telephones are on a two-number basis *and from attended public telephones on a particular person basis*.

The underlined (or italicized) words indicate the changes in the tariff giving rise to this dispute.

Prior to the revised tariff becoming effective the service from coin-box public telephones was on a two-number basis, at 5 cents for a five-minute conversation, and from attended public telephones on a particular person basis at 10 cents for the same conversation period. The revised tariff changes that by eliminating the particular person basis of calls at attended public telephones, yet maintaining the double fee of 10 cents at such attended public telephones as against the coin-box telephones. That is, prior to the revised tariff, a person using a coin-box public telephone paid 5 cents whether he got his particular person or not, but in an attended public telephone he paid 10 cents if he got his particular person—nothing if he did not. Under the present tariff he pays the same at a coin-box, but at an attended public station he pays double that amount for the same service.

The complaint of Mr. Auguste Lemieux, K.C., of Ottawa, is against the unreasonableness of this change of tariff. There is no dispute as to the facts narrated as emphasizing the change in tariff.

The telephone company in its answer attempts to justify the change and the increased toll involved upon the user of an attended as against an automatic public telephone, on the ground of extra trouble, time, and expense, that it is unproductive work without compensation. That the attendance of an operator increases the value of the service to the public. The user is not required to deposit money, or make change, nor is he "put to the inconvenience of having change handy—or having to go and get change, etc."

It seems to me there is very little, if any, difference to the public using a coin-box or an attended public station. They are clearly both "public telephones" within the definition of the telephone company itself in both the tariffs cited. For local calls only there is no necessity for the establishment of attended stations, and the telephone companies established them at their discretion and where warranted by receipts, chiefly for long distance business, and at such points where that business is most profitable. The company advertizes to the public, in its tariffs filed as regards these public telephones that:—

"Equipment.

Public telephones are regularly connected with individual lines, party lines, or hotel or company attended private branch exchange switch-boards, *and if not in charge of an attendant employed for the purpose, are equipped with coin-collecting devices, etc."*

Booths are furnished at these stations where warranted by the estimated receipts, and in all cases the company furnishes and displays a standard sign to advertise the station.

And the company's definition of a public telephone as published in its tariffs referred to is that it is "an exchange station, installed at the company's initiative,

or, at its option, at a location chosen or accepted by the company as suitable and necessary for furnishing service to the general public."

Whether a public station is attended or not the service to the public as regards local calls is now the same. A person using a coin-box gets just the same, if not more rapid service, than at an attended station because he calls central direct, instead of communicating his wishes first to the attendant and awaiting the result of her effort. The transaction at a coin-box is simple and speedy. If the person called is there, or not there, the caller pays five cents. Yet, for precisely the same result, through a more complex and necessarily slower service at an attended station he pays double that amount.

I do not see anything cogent in the company's argument to explain the reason for this discrimination against that portion of the public which uses attended public telephones. If there is no necessity for the establishment of attended stations for local calls only (and that is, I think, made quite clear), then why, if they are so established and advertised to the public as public stations, should the company exact double the toll for the same service, involving the same (nay, less) use of its lines, equipment, and servants, at another public station where there is no attendant and no necessity for one? If the patron calling got more for his money at the former than at the latter station there would be some justification for the difference, but in effect and result it is the same service—one automatic, and the other through an attendant. These attended stations being obviously unnecessary for local calls, and being established for the increase of the company's revenues, or convenience in handling its productive long-distance business, it is difficult to see the justice of making the public permitted to use it for long-distance calls contribute to its maintenance, and I heard nothing in the argument of counsel for the company to sustain the contention that there was such additional service, necessary to the call, as would justify the imposition of a double tax in the case of a call where the person called cannot be got on the line.

To exemplify the above. If in the Windsor Hotel public telephone, for instance, there had been coin-box public telephones for local calls, Mr. Lemieux, and the public generally, could have had the same service for five cents as that he obtained at ten cents, and the service obtained would have been probably more expeditious than that he obtained (?) at double that amount, and without any tax upon time or energy of attendants. In large railway stations one sees a row of telephone booths each containing a coin-box telephone, no servant of the company being present or necessary, and the local calls being at the five cent rate.

I see no more difference between the two services, and no more reason for an increased charge in the case of an attended as against a coin-box station, than in the case of purchasing such articles as are sold through automatic machines as well as in a large store. The article sold by the automatic vending machine is obtained by mechanical means in the one case, in the other by entering an expensively maintained shop, yet no one would argue that more should be paid for the same article purchased in the latter than in the former case. And in the case of an important public utility, the reasons for equalizing the tolls for the service given are more cogent than in the instance cited.

With respect to that part of the amended tariff that eliminates the particular person basis of call at attended public stations provided for in the original tariff, it seems clear that therein lay the only extra service to be obtained in connection with a local call which would justify an extra charge at such a station, because it is obvious that it involved the additional service incident to a local call which under that tariff could be obtained at an attended public station as against that to be obtained at a coin-box public station, for which the user should pay. Under the original tariff, coin-boxes being on a two-number basis and attended stations on a particular party basis, the result was, in the first instance, that the caller paid a 5-cent toll on the chance of getting the person he desired. If he failed he contributed 5 cents for the effort.

But, if he made the same attempt at an attended public telephone he risked nothing if he asked in advance for his particular person, because the amended tariff has the effect of maintaining the same conditions at coin-box public telephones, but of doubling that toll at attended public telephones to the unsuccessful caller.

In my opinion there is such disparagement between the two as justifies the complaint to the extent of calling for some relief. I see no reason why the telephone companies, where for purposes other than local calls they open attended public stations, should not handle local calls either through coin boxes installed in the booths, or give the public the right of service for local calls on a particular person basis, as is done in long distance calls.

As the particular person basis is eliminated by the tariff now under consideration, I think it no hardship upon the company and only justice to the public that the company should be required to equalize its tolls for local calls, by filing a tariff-fixing rate for local messages on a two-number basis from public telephones inside base rate area at 5 cents and outside base area at 10 cents, and would order accordingly.

OTTAWA, June 4, 1918.

ORDER No. 27327.

In the matter of the complaint of Auguste Lemieux, K.C., against the practice of the Bell Telephone Company of Canada of charging a toll in Montreal of ten cents for local calls from public pay stations on a two-number basis when there is no conversation.

File No. 3574.199.

THURSDAY, the 20th day of June, A.D. 1918.

Sir HENRY DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, May 21, 1918, in the presence of counsel for the Bell Telephone Company, the complainant appearing in person, and what was alleged,—

It is ordered: That section 19 of the Bell Telephone Company's Tariff, C.R.C. No. 3100, be amended so as to provide a rate for local messages from coin-box public telephones, or from attended public telephones on a two-number basis inside the base areas at five cents each, and from coin-box public telephones outside the base areas at ten cents each; schedules to provide for the said amendment to become effective within fourteen days from the date of this order.

H. L. DRAYTON,
Chief Commissioner.

Application of the Windsor, Essex and Lake Shore Rapid Railway Company for permission to file tariffs providing for a general advance in the tolls for the carriage of freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File 28439.8.

JUDGMENT.

Mr. COMMISSIONER McLEAN:

Application is made by the Windsor, Essex and Lake Shore Rapid Railway Company for permission to put into force the same increases in freight rates as have been authorized in the case of steam railways, as well as in the case of certain electric lines.

It is represented by the railway that the only agreement existing with any municipality which in any way has a bearing on the levels of freight rates is section 7 of by-law No. 1101 of the city of Windsor. Said by-law respecting the Windsor, Essex and Lake Shore Rapid Railway Company was passed the 15th day of December, 1903, and refers to an earlier by-law of the corporation of the city of Windsor, No. 1056, dated June 9, 1902. By-law No. 1101 appears to have been passed in view of certain amendments which were desired in by-law No. 1056, said amendments being in respect of the extension of the period during which the railway operating within the limits of the city of Windsor was to be exempt from taxation; and also dealing with the contribution by the railway company to the cost of certain paving improvements.

By-law No. 1101, above referred to, by section 7 thereof, reads as follows:—

“The company shall carry freight to and from Windsor upon the entire or any portion of its system at rates not in excess of regular steam railroad rates, for similar distances and between the same places.”

It would appear from the wording of this section that the intention of the by-law was that whatever the steam railroad rates in the area as defined might be from time to time, the rates as charged by the Windsor, Essex and Lake Shore Rapid Railway Company should not exceed them.

The railway has an operating length of 39.156 miles. It has a capitalization of \$750,000 of stock and \$750,000 mortgage bonds outstanding. No dividends are returned as having been paid upon the stock during the period 1915-1917. The mortgage bonds bear interest at 5 per cent, thus amounting to \$37,500 annually. In 1915 only \$24,500 of the interest charges on the bonds were paid. The interest payments have been averaged up in the years 1916 and 1917. The road has a capitalization of \$38,308 per mile.

Reference has been made in the decision of the Board in the application of the *Brantford and Hamilton Electric Railway Company* re “Freight rate increases,” file 28439.10, to the earnings per mile of said railway on the basis of net earnings from operation, less taxes. In the case of the Windsor, Essex and Lake Shore Rapid Railway Company, the comparative earnings per mile are as follows:—

1915.. . . .	\$1,388
1916.. . . .	1,509
1917.. . . .	1,764

The financial situation of the railway company for the years 1915-17, after deducting taxes, is summarized in the following statements:—

	1915.	1916.	1917.
Net earnings from operation, less taxes.. . .	\$52,209 71	\$59,128 34	\$69,082 35

The charges accruing on floating debt for the years in question are as follows:—

1915.. . . .	\$19,415 07
1916.. . . .	19,275 13
1917.. . . .	19,332 56

In a summary way, the situation is as follows:—

	1915.	1916.	1917.
Balance after deduction of taxes and payment of fixed charges.	\$14,709 71	\$21,628 34	\$32,582 35
Balance after deduction of taxes, fixed charges, and interest in floating debt..	4,705 36*	2,353 21	13,149 71

* Deficit.

Applying the same method as in the case of the *Brantford and Hamilton Electric Railway Company* and taking the bonded debt as a minimum on which to compute necessary earnings, this gives a capital sum of \$19,154 per mile. If the same basis of computation as was applied in the above case and in the *London and Port Stanley Railway Case* were applied in the case of the funded debt alone of the applicant company, to properly carry its investment it should, over and above operating expenses and taxes, earn \$56,250 instead of \$32,582.35 as shown.

The general part played by the freight business for the years in question is set out below:—

Year.	Total Tons Carried.	Freight Earnings. Gross.	Per cent of Freight Earnings to Total Gross Earnings.
1915..	29,808	\$26,571 70	16.8
1916..	32,142	26,616 31	16.7
1917..	40,630	32,447 26	17.7

The material submitted in respect of increases in cost of supplies is comparable with what has been submitted by other electric railways whose applications have been dealt with by the Board. There has been an increase in labour costs. With an increase in the total volume of business as between 1915 and 1917, the railway has reduced its number of employees by 25. At the same time, the aggregate paid for salaries and wages has increased by \$4,257.29.

The figures available for the period from January to April, inclusive of the present year, are set out below under appropriate headings:—

Month.	Gross Revenue.	Operating Expenses.
January..	\$ 8,262 02	\$10,811 40
February	10,587 20	9,146 01
March..	13,643 82	8,833 79
April..	10,792 64	10,076 04
	<u>\$43,285 68</u>	<u>\$38,867 24</u>

Allocating bond interest and taxes for the months in question, there are accrued charges of \$12,520 interest and \$706 taxes; that is to say, to pay the accrued charge of \$13,206 there is available a net operating revenue of \$4,418.44 or, in other words, there is in connection with these items alone a deficit of \$8,787.56. It is pointed out that the gross earnings for April, 1918, were 24.26 per cent less than those of the corresponding month of 1917.

A case for an increase in freight rates as asked for has been made out, and order may go subject to compliance with the statutory requirements as to publication of standard tariffs.

June 7, 1918.

The Chief Commissioner concurred.

ORDER No. 27308.

In the matter of the application of the Windsor, Essex and Lake Shore Rapid Railway Company, hereinafter called the "applicant company," for authority to file tariffs providing for a general advance in the tolls for the carriage of freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439.8.

SATURDAY, the 15th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That the applicant company be, and it is hereby, authorized to increase its freight rates, except on coal, by fifteen per cent, and its rates on coal by 15 cents a ton.

2. That the increased rates herein authorized shall not become effective until the applicant company has complied with the requirements of section 327 of the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

Application of the Chatham, Wallaceburg and Lake Erie Railway Company for an Order permitting it to file tariffs providing for a general advance in the tolls for the carriage of passengers and freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File 28439.9.

JUDGMENT.

Mr. COMMISSIONER McLEAN:

Application is made by the Chatham, Wallaceburg and Lake Erie Railway Company for sanction to increase its rates for the carriage of freight and of passengers to the same extent as has been permitted by the Board in the case of steam railways.

The railway company represents that it has no agreement with any municipality which in any way limits the rates, either freight or passenger, which it may charge. It further represents that the present application does not involve an increase in the existing 5-cent fare applicable in the city of Chatham.

The railway is 40.6 miles in length and has a capitalization of \$35,839.90 per mile, allocated as follows: stock, \$18,733.99; bonds, \$17,185.91.

On a mileage basis, its net earnings from operation, less taxes, have been for the years 1915-1917 as follows:—

1915..	\$ 801
1916..	1,601
1917..	1,053

These earnings are low as compared with those of the Brantford and Hamilton, the London and Port Stanley, and the Windsor, Essex and Lake Shore Rapid Electric Railway Companies whose applications for rate increases have been dealt with by the Board.

For the calendar years 1915 to 1917, the following results are available:—

Year.	Gross Revenue.	Operating Expense	Net Revenue.
1915..	\$137,627 83	\$119,608 87	\$18,018 96
1916..	143,798 64	126,025 67	17,772 97
1917..	131,326 30	129,523 60	1,802 70

The fiscal years ending June 30 are used in the computations that follow because there is available in connection therewith the detail of the Government returns, and such material is also more readily comparable with what has been used in other cases.

The financial situation of the applicant company for the fiscal years 1915 to 1917 is summarized in the following statements:—

	1915.	1916.	1917.
Net earnings from operation less taxes..	\$32,549 87	\$65,103 85	\$42,752 92

The company has outstanding \$760,000 of common stock on which no dividends have been paid during the period in question. It has also outstanding \$694,500 of funded debt paying 5 per cent—that is, an annual interest charge of \$34,725.

The interest charge on floating debt was:—

1915..	\$1,343 38
1916..	3,865 56
1917..	2,736 13

Summarizing the detail above set out, the situation is:—

	1915.	1916.	1917.
Balance after deducting fixed charges and taxes..	*\$2,175 13	\$30,378 85	\$8,027 90
Balance after deducting above and interest on floating debt..	*3,518 51	26,513 29	5,291 77

* Deficit.

If there is taken into consideration alone the bonded indebtedness amounting to \$17,105 per mile, and this is taken as a basis on which to compute a proper necessary minimum earning, applying the method used in the *Brantford and Hamilton* case, there would be necessary over and above operating expenses and taxes \$52,087.50, instead of \$8,027.50 as earned.

An analysis of the company's earnings as between transportation revenues and miscellaneous revenues give the following distribution:—

Year.	Transportation Revenue. Per cent.	Miscellaneous Revenue. Per cent.
1915..	94.7	5.3
1916..	95.2	4.8
1917..	94.8	5.2

Miscellaneous revenue covers the following items: Advertising, rent of lands or buildings, rent of equipment, sale of power, sale of steam.

The passenger and freight earnings as well as the number of fare passengers and number of tons carried are as follows:—

Year.	Fare Passengers.	Passenger Earnings.	Tons Carried.	Freight Earnings.
1915..	375,955	\$64,782 85	94,485	\$51,952 85
1916..	416,049	73,400 70	107,484	63,997 75
1917..	348,774	66,798 95	106,390	57,168 57

The transportation revenues are distributed as follows:—

Year.	Freight. Per cent.	Passenger. Per cent.	Mail, Express, Milk etc. Per cent.
1915..	43.4	54.2	2.4
1916..	45.3	52.0	2.7
1917..	44.9	52.5	2.6

The railway has been subjected to the same general increase in material costs as other electric lines.

While the gross payment for salaries and wages in 1917 is only slightly more than in 1915, it is to be noted that along with this there is a reduction of 21 per cent in the number of employees as compared with 1915.

The figures already submitted show a sharp drop in earnings in the calendar year 1917, as compared with that for the fiscal year ending June, 1917. This indicates the effect of the drop in revenue in the period June to December, 1917. The situation thus disclosed is manifest also in the figures of the present year.

For the three months, January to March, 1918, the operating ratio is 104.64 per cent, as compared with ratios for the same period of 59.62 per cent in 1915, 57.24 per cent in 1916, and 68.78 per cent in 1917.

The gross earnings for the three months in question amounted to \$23,079.23. Against this there is an operating expenses of \$24,150.59; the result being an operating deficit of \$1,071.36.

When there is considered the appropriate quota of taxes and of interest on bonded indebtedness for the months in question—exclusive of interest on floating debt—the result is to add \$8,927.88 to the deficit. The interest on the floating debt for the period in question would add \$684.62 more.

In addition to the financial detail above set out, there are car rental obligations outstanding as follows:—

	1914.	1915.	1916.	Total.
Michigan Central.. . . .	\$134 10	\$1,662 30	\$1,012 95	\$2,809 35
Canadian Pacific Railway.. . . .	74 70	1,830 35	727 65	2,632 70
Grand Trunk Railway.. . . .	135 00	1,920 25	1,264 95	3,320 20
Wabash Railway.. . . .	15 30	248 40	69 75	333 45
Pere Marquette Railway	4 95	283 05	79 90	367 90
	<hr/> \$364 05	<hr/> \$5,944 35	<hr/> \$3,155 20	<hr/> \$9,463 60

In connection with the application, it is explained:—

“On account of some misunderstanding (of the) former management this amount is under investigation. Had we settled our per diem accounts promptly, years 1915 and 1916, it would have further decreased our earnings.”

It may be noted that the question of obligations of the C.W. and L.E. under the per diem rules was before the Board on June 6, 1916, on the complaint of the Dominion Sugar Company that the G.T.R., C.P.R., M.C.R., Pere Marquette and Wabash Railways had given notice to the Chatham, Wallaceburg and Lake Erie Railway that they would not furnish the latter road with empty cars for loading pending settlement of payment of per diem charges. *File 27015.*

The company's position as to power production costs is as follows:—

“We had contract with Chatham Gas. Co. to furnish us power to take care of our requirements for \$1,150 per month. The agreement allowed Chatham Gas Co. to operate boilers and machinery located in our power-house and was to remain in effect until December 31, 1920, unless there was failure in natural gas supply, which would automatically cancel agreement. On December 16, 1917, there was not sufficient natural gas to operate boilers and on account of gas producers making the announcement that there was a shortage in gas fields, Chatham Gas Co. notified us that they could not furnish power and that agreement on this account was cancelled. We were then compelled to make temporary alterations to our three boilers at cost of about \$800, and purchase sufficient soft coal on the open market to take care of our immediate wants which cost us \$10 per ton laid down at our power plant.

“The supply of natural gas is again normal and at present our gas bill figuring supply at present rate of 12 cents per thousand will average \$2,000 per

month, this in addition to engineers, firemen and other workmen employed in power-house; also oils, repairs to engines, etc., making a total monthly expense of \$3,000 as compared with \$1,150 under our old contract.

"The natural gas question was recently referred to the Municipal and Railway Board of Ontario who have issued instructions that all manufacturers must discontinue the use of natural gas on and after July 1, 1918, and although the engineer who made the report has suggested to the Board that we be allowed to continue using gas, on account of also operating steam-heating plant, we have no assurance that such concession will be allowed. In any event, it is understood that gas will be increased from 12 cents to 15 cents per thousand for large users. If we are compelled to operate from bituminous coal it will mean radical changes to our boilers involving cost of \$1,500 and as our consumption of fuel would be at least 900 tons per month, basing price at \$6 per ton laid down at boiler-house, fuel account alone would average over \$5,000, in addition to other expenses."

A case for the increase in rates as asked for has been made out, and order may go subject to compliance with the statutory requirements as to publication of standard tariffs.

June 7, 1918.

The Chief Commissioner concurred.

ORDER No. 27309.

In the matter of the application of the Chatham, Wallaceburg and Lake Erie Railway Company, hereinafter called the "applicant company," for authority to file tariffs providing for a general advance in the tolls for the carriage of passengers and freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439.9.

SATURDAY, the 15th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That the applicant company be, and it is hereby, authorized to increase its freight rates, except on coal, by fifteen per cent, and its rates on coal by 15 cents per ton; also to increase its passenger fares by 15 per cent.

2. That the increased rates herein authorized shall not become effective until the applicant company has complied with the requirements of sections 327 and 331 of the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

JUDGMENT.

THE CHIEF COMMISSIONER:

The original application made in this matter was to expropriate land for the purpose of extending the Kinnear yard of the Toronto, Hamilton and Buffalo Railway Company.

The company made out the necessary case under the provisions of the Railway Act. The Board found that the public business to be carried by the company demanded the extension of the Hamilton facilities. The Board, although finding that the necessity for the extension existed, did not issue an order for the expropriation, but gave the city the opportunity of leasing the land which was sought to be taken, for a period of five years. The Board's judgment reads:—

“Under these circumstances, the Board has no alternative but to approve the application, unless some arrangements can be made between the parties.

“At the hearing, I indicated that the matter should be arranged. The city are the owners of the land in question; they do not desire that the company's holdings in the south end of the city should be increased and the movement of the company's facilities from its present site rendered the more difficult and expensive.

“On the other hand, at the present time, every one realizes that it is impossible to carry into effect the Tye-Cauchon report. I trust also that every one realized that Hamilton's traffic, as well as the through traffic, must be provided for, and that the present is no time to add to difficulties of transportation.

“My suggestion was that, instead of an expropriating order going, Hamilton would allow the company to occupy the land, which is at the present put to no use whatever, for the period of five years, and five years only; without any provision for renewal. At the end of the five years the city and railways may be in a position to finance the ultimate solution of the Hamilton railway problem whatever form it may take. If, on the other hand, nothing can even then be done, the company will still be in just as good a position to make an application for an order of expropriation as it is to-day.”

The parties have not got together, and there has been a good deal of delay, the lease which the city proposed to give being forwarded under letter of May 22, 1918, although the judgment was delivered in December, 1917.

The parties disagree entirely as to the conditions under which the property ought to be leased. In the first instance, the city demands an annual rental of \$933. The company claims that the property, which consists of 2.96 acres, was purchased by the city for only \$1,000 an acre, and submits that as the property is all mountain slope the price paid was very much in excess of the real value of the property.

The city naturally does not desire to make it more difficult to carry out the Tye-Cauchon report, if that becomes practicable. The whole suggestion of leasing is entirely in ease of the civic difficulty. The matter of rent is entirely a subsidiary question. I would fix the rent at 7 per cent of whatever sum the city actually paid for it, or 7 per cent of its present assessed value, whichever is the higher.

The lease also contains a clause prohibiting the shunting or sorting of cars on Sundays or during the hours between 10 o'clock, p.m., of every other day and 6 o'clock, a.m., of the following day, on the lands leased. The Board's Engineer states that this would simply mean more shunting on adjacent property, unless traffic is to be tied up. The clause should be stricken out.

The lease also contains a clause which the city has inserted, that the company shall at all times allow free passage along the roadway or lane of the lessor lying

westerly of the lands demised crossing the right of way of the lessee. The company claims that this is not a city lane and that title to the lane is in the railway company and not in the lessor. On looking at the plan this lane would run across nine tracks; five of these nine are old tracks, and four are necessary to look after the increased business. It is always more or less dangerous to cross tracks in freight yards. In this case, however, the danger would be greatly increased, owing to the fact that the profile shows a rise of 24 feet in the first hundred feet south of the company's present right of way, and 21.9 feet rise in the next hundred feet. At a point but a little farther south the lane strikes the Grand Trunk right of way, and south of that right of way the grades are even steeper. The right to cross is challenged, and in this temporary lease no terms should be inserted which would make those challenged rights absolute. I would strike out the provision as drafted, but think that a provision should be inserted by way of proviso which would retain whatever rights of crossing the city now has, if any.

The city also desires that the company build, at its own expense, a roadway to the south of the property leased to the company, running easterly from the lane above referred to, and to construct the roadway to the satisfaction of the city engineer of Hamilton.

As already stated, the lease is in ease of the city's position, and cannot in fairness be made a ground for throwing upon the company the expense of the construction of public highways.

There are other clauses dealing with the use of the premises, providing for the removal of ties, rails and equipment from the demised premises, and that the railway should restore the premises, including fences, to proper condition. The company strongly objects to any lease which does not contain a provision that if, at the end of the demised period the term should not be extended, and the company should have to take up its tracks, the city should recoup the company for its wasted expenditure, and the company should not be required to restore the premises to the condition in which they found them, as it would be impossible to do so.

The company points out that the property is very heavily wooded, and that they would have to cut down timber in order to make the land available for railway construction and operation.

The land is required for railway purposes. The particular railway purposes for which it is required is for yard work which, of course, means sidings and passing tracks. These sidings and passing tracks may require buildings, such as shelters for watchmen, signalmen, and the like. The company should have the right to make these structures without question.

On the other hand, the lease ought not to contain any clause indemnifying the company. The whole idea of the Board is that, should it be found practicable, and within the period of five years it should be thought reasonable to change the location of the line, the position of the company on the one hand and the city on the other should remain as much as possible in the same plight as it is to-day.

The company also objects to the clause that the lessor may enter and view state of repair; and will not assign or sublet without leave; and will leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

Under the conditions, the clauses to enter and view state of repair, and of leaving the premises in good repair, are not applicable; but the company's objection to the clause which prevents an assignment or sub-letting without leave is not well taken, and the lease, in fairness to the city, ought to include the usual provision against assigning or sub-letting.

The demands on the transportation systems of the country are great. The company is now completing the construction of its yard at Bridgeburg, and if the proper and anticipated results are to be obtained from that work, the Kinnear yard must be extended without further delay.

The Board has no jurisdiction to order that a lease be given on the terms above indicated. As pointed out in the main judgment, the Board, however, can order the land to be expropriated, and an order will go for expropriation on the expiration of ten days from the issue of this judgment, unless a lease is given by the city or the company embodying the above provisions.

OTTAWA, June 12, 1918.

Commissioner Goodeve concurred.

GENERAL ORDER No. 234.

In the matter of the applications of the United Grain Growers, Limited, the Northwestern Grain Dealers' Association, the Campbell Flour Mills Company, Limited, the Quaker Oats Company, the Cambridge Roller Mills, the Northern Grain Company, et al., for a ruling of the Board in the matter of protection of the old rates on grain shipped prior to March 15, 1918, to interior mills and elevators with published transit privileges and reshipped after the new rates came into effect.

And in the matter of the General Order of the Board No. 212, dated the 15th day of January, 1918, and Orders in Council pertaining thereto.

File No. 8641.3.

WEDNESDAY, the 22nd day of May, A.D. 1918.

Sir HENRY DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading the applications and what was alleged in support thereof and the written argument filed by counsel for the Canadian Pacific Railway Company in reply,—

It is ordered as follows with respect to carriers whose tariffs provide for the milling, malting, storage or cleaning of western grain in transit:—

1. That with respect to all grain originally shipped prior to March 15, 1918: the said grain or the produce thereof reshipped within six months from the stop-over point shall be entitled to the balance of the through rate existing at the time of the original shipment of the grain under the transit tariffs applicable.

2. That with respect to all wheat originally shipped on and after the 15th day of March, 1918: the said wheat or the product thereof reshipped from the stop-over point west of Fort William before the 1st day of June, 1918, to destinations west of and including Port Arthur and Armstrong, shall be entitled to the balance of the through rate to the said destinations existing at the time of the original shipment of the wheat under the transit tariffs applicable.

3. That with respect to all grain other than wheat as referred to in section 3 hereof, originally shipped on and after the 15th day of March, 1918, under the transit tariffs applicable thereto, which or the product whereof is reshipped from the stop-over point within six months; the rate to be applied on the said reshipped grain or product may be the balance of the through rate existing from the original point of shipment of the grain to the final destination thereof or of the products at the time of the reshipment from the stop-over point.

4. That the charge for the terminal service at the stop-over point, also the charge for the haul, if any, out of the direct line of transit, in accordance with the tariffs applicable, shall be additional in each case.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 237.

In the matter of Circular No. 165, dated April 19, 1918, with reference to accidents to railway employees where two main tracks parallel each other.

File No. 28433.

FRIDAY, the 31st day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading the submissions filed on behalf of the railway companies, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That all railway companies subject to the jurisdiction of the Board, be, and they are hereby, required to adopt the following rule for the protection of employees where two main line tracks parallel each other and are less than twenty feet from centre to centre, namely:—

“Where two main tracks parallel each other and are less than twenty feet from centre to centre, whether such tracks are for double or single track operations, employees in every instance, when stepping out of the way of approaching trains, must move to the right of way and not to the other track.”

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 238.

In the matter of the General Order of the Board No. 235, dated May 22, 1913; and the application by the Canadian Northern Railway Company to amend said order.

File No. 2338.4.

FRIDAY, the 31st day of May, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That said General Order No. 235 be, and it is hereby, amended by striking out the words “to place such freight therein” after the word “provided” in the fourth line of paragraph (b) of the order and substituting therefor the words “to place therein all such freight as would be liable to damage from the weather or exposure.”

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27283.

In the matter of the application of the Canadian Northern Quebec Railway Company, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open for the carriage of traffic, its line of railway (revised location) from a point in lot 1017, in the parish of St. Theophilus, to a point in lot 87, in the parish of St. Flore, in the county of Champlain, province of Quebec, a distance of 356.3 feet; and for leave to use and operate the bridge over the St. Maurice river at mileage 81.12.

File No. 12017.

WEDNESDAY, the 5th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its line of railway (revised location) from a point in lot 1017, in the parish of St. Theophilus, to a point in lot 87, in the parish of St. Flore, in the county of Champlain, province of Quebec, a distance of 356.3 feet; and to use and operate the bridge over the St. Maurice river at mileage 81.12; the speed of trains operated over the said line not to exceed eight miles an hour.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27290.

In the matter of the complaint of the Brotherhood of Locomotive Firemen and Enginemen regarding the conditions experienced by employees in locomotive service caused by smoke and gases operating through Connaught Tunnel, British Columbia.

File No. 21029.7.

WEDNESDAY, the 5th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the complaint, and on behalf of the Canadian Pacific Railway Company, and the report and recommendation of the Chief Operating Officer and the Assistant Chief Engineer of the Board,—

It is ordered: That a clearance order for west-bound trains from Stoney Creek be not issued until the agent at Stoney Creek is advised by the fan operator at the west portal of the tunnel that the fans are actually, and have been for a period of ten minutes immediately prior thereto, in operation, the order to provide that said fans continue in operation until the arrival of the train at Glacier; the company to file with the Board a copy of such clearance order.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27296.

In the matter of the complaint of the residents of Camden East, in the province of Ontario, against the train service furnished by the Canadian Northern Railway Company at that point.

File No. 276334.

SATURDAY, the 8th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer; and upon reading what is filed on behalf of the railway company, the said company consenting,—

It is ordered: That the Canadian Northern Railway Company stop its train No. 11 on flag at Camden East for passengers destined to points beyond Trenton, Ont.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27305.

In the matter of the application of the Canadian Manufacturers' Association for a reduction in the classification of stove putty shipped in barrels; and for an Order requiring railway companies to carry asbestos cement shipped by G. F. Sterne & Sons, Brantford, Ont., at fourth-class rates in less than carloads.

File No. 19367.72.

SATURDAY, the 8th day of June, A.D. 1918.

Hon. W. B. NANTEL, *Deputy Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, April 16, 1918, the complainant, the Canadian Freight Association, and the Grand Trunk Railway Company being represented at the hearing, and what was alleged; upon reading the further submissions filed; and upon the report and recommendation of the Chief Traffic Clerk of the Board, concurred in by its Chief Traffic Officer,—

It is ordered: That the applications for a reduction in the classification of stove putty shipped in barrels, and for an Order requiring railway companies to carry the said asbestos cement at fourth-class rate less than carloads, be, and they are hereby, dismissed.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 27306.

In the matter of the application of the Brantford and Hamilton Electric Railway Company for approval of its Standard Mileage Freight Tariff, C.R.C. No. 4.

Case No. 3477.

FRIDAY, the 14th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The tariff having been filed on the basis permitted by the Board in its Order No. 27270, dated May 30, 1918,—

It is ordered: That the said Standard Freight Mileage Tariff of the Brantford and Hamilton Electric Railway Company, C.R.C. No. 4, dated to become effective July 1, 1918, be, and the same is hereby, approved; such tariff together with reference to this Order to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27321.

In the matter of the application of the Rugg-Ball Manufacturing Company, Limited, of Ayers Cliff, Quebec, for a reduction in the classification of wooden snow shovels.

File No. 19367.79.

SATURDAY, the 15th day of June, A.D. 1918.

Sir HENRY DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, June 10, 1918, the Canadian Freight Association and the Toronto Board of Trade being represented at the hearing, no one appearing for the applicant; and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed, without prejudice to a renewal of the application at a later date if so desired.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27312.

In the matter of the application of the Chatham, Wallaceburg and Lake Erie Railway Company, hereinafter called the "applicant company," under sections 327 and 331 of the Railway Act, for approval of its Standard Freight Mileage Tariff, C.R.C. No. 530, and its Standard Passenger Tariff, C.R.C. No. 37.

File No. 2609-1.

TUESDAY, the 18th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

The said standard freight and passenger tariffs having been filed on the basis permitted by the Board in its Order No. 27309, dated June 15, 1918,—

It is ordered: That the applicant company's said Standard Freight Mileage Tariff, C.R.C. No. 530, and Standard Passenger Tariff, C.R.C. No. 37, each to become effective July 1, 1918, be, and they are hereby, approved; the said tariffs, together with reference to this order, to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27317.

In the matter of the application of the Grand River Railway Company, under the amending Act, section 11, chapter 61, 7-8 Edward VII, for approval of a by-law passed December 18, 1917, authorizing M. W. Kirkwood, general manager, and C. J. Whitney, general freight and passenger agent of the company, from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight and passenger traffic upon the railways owned or operated by the company or any portion thereof.

File No. 28710.

TUESDAY, the 18th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law authorizing M. W. Kirkwood, general manager, and C. J. Whitney, general freight and passenger agent of the company, from time to time to prepare and issue tariffs of the tolls to be charged for the carriage of freight and passenger traffic upon the railways owned or operated by the company or any portion thereof be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 239.

In the matter of the General Order of the Board No. 230, dated May 17, 1913, in the matter of the interswitching of freight traffic.

Case No. 2846.

WEDNESDAY, the 19th day of June, A.D. 1918.

Sir HENRY DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed on behalf of the Canadian Manufacturers' Association,—

It is ordered: That the effective date of the schedules to give effect to the said General Order No. 230 be, and it is hereby, postponed from the first day of July, 1918, to the first day of August, 1918.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 167.

Case 4704. Rules for wires erected along or across railways—General Order No. 231.

June 19, 1918.

The Board is in receipt of inquiries in regard to the scope of General Order No. 231, dated May 6, 1918, containing rules for wires erected along or across railways, and as there appears to be some misunderstanding as to whether an order is necessary where construction is along the railway, I am directed to state that the amending provision, section 7, chapter 22 of the Statutes of 1911, dispensing with the necessity of an order where the railway company consents, as set forth on page 2 of General Order No. 231, as printed, applies only to construction *across* the railway.

Where the wires or other conductors are to be erected *along* the railway an order of the Board is therefore necessary.

By order of the Board.

A. D. CARTWRIGHT,
Secretary.

UNIVERSITY OF TORONTO The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaints of the Crushed Stone Limited, of Toronto, and the Henderson Farmers' Lime and Phosphate Company, of Woodstock, Ont., against the rates charged on agricultural limestone.

Files 26786.4 and 26786.

JUDGMENT.

Mr. COMMISSIONER McLEAN:

Complaint is directed against the action of the Grand Trunk Railway Company in increasing its rates on agricultural limestone from Kirkfield, Ont. The two producing points referred to are Kirkfield, Ont., and Beachville, Ont.

The rate which was put in force from Kirkfield by Supplement 45 to tariff C.R.C.E-3422 covered advanced rates on stone dust in packages, C.L., from Kirkfield, Ont., to various points. These rates were increased from one-half cent to one cent per 100 pounds. The rate to Toronto, which, as will be seen below, may be taken as typical, was advanced by one-half cent per 100 pounds.

The rates as put in from Kirkfield in the tariff in question were on the same mileage basis as the existing rates from Beachville, the basis from the latter point being 80 per cent of the crushed-stone mileage scale rates, plus the 5 cents per ton granted in the Eastern Rates Case.

Beachville made no representation in the matter; nor is there anything before the Board showing that the rates are unsatisfactory so far as that point is concerned.

The Henderson Farmers' Lime and Phosphate Company of Woodstock, Ont., intervened, setting out that the existing rates instead of being increased should have been lowered; that there was no justification in giving the stone dust involved a different treatment from crushed stone, as the former was simply a waste product of the latter; that reduction of freight rates was necessary in order to permit larger use of stone dust; that reduction of rates would increase rail tonnage; and that lower rates were, in general, given in the United States on stone dust than on crushed stone.

Agricultural limestone, as manufactured by the Crushed Stone Company of Toronto, while spoken of by the Henderson Company as a waste product, is obtained by an additional grinding process. The bulk of the shipment from Kirkfield is to Toronto, where it is used as a filler in the manufacture of a fertilizer. The price of the agricultural limestone is \$2.80 per ton f.o.b. quarries. The manufactured fertilizer, into which it enters, is of much higher value, ranging from \$30 to \$80 per ton. Limestone dust, which entails some additional grinding process, has been sold at \$5.60 a ton. This, however, included a freight rate of \$1.80. This is used as a filler in paving. Apparently it is of too fine a texture to be used as a fertilizer.

It was stated by Mr. Essery of the Crushed Stone Company that 75 per cent of his product—he corrected this to 60 per cent—was shipped to Toronto. Toronto may be taken as a representative point.

What was in substance contended was that there was difficulty in developing a market with individual farmers; and that it would be in the public interest to develop the use of this product as a fertilizer, thus aiding production.

It may be noted, in this connection, that it has been more than once set out that the function of the Board, as delegated by Parliament, is to deal with reasonableness of rates; that it is not authorized to strike a low-rate basis, independent of its reasonableness, to develop a particular industry. No matter how much the development of the industry may be in the public interest, the Board is not authorized to be an arbiter of industrial or public policy. Its jurisdiction begins and ends with the rate. That a railway may, of its own volition, install development rates while the Board is not empowered to exercise such a discretion is well established. *Massiah v. C.P.R. Co.*, 17; *Can. Ry. Cas.*, 88, at p. 90; *Western Retail Lumbermen's Ass'n. v. C.P., C.N. and G.T.P. Ry. Cos.*, 20 *Can. Ry. Cas.*, 155, at p. 158 and decisions there referred to.

The question must be looked at from the standpoint of the reasonableness of the rate.

The following discussion took place in regard to the effect of volume of commodity rate basis in the United States:—

"The ASSISTANT CHIEF COMMISSIONER: How do you account for the fact that agricultural lime does not take the same rating as crushed stone? You quoted some cases where the rates were higher and some where they were lower.

"Mr. ESSERY: They are special commodity rates.

"The ASSISTANT CHIEF COMMISSIONER: Governed by the volume?

"Mr. ESSERY: Yes, I would assume so."

Whatever may have been the pertinency of rate comparisons as submitted—and this depends on identity of conditions which identity was not developed in evidence—the basis of comparison is out of line now on account of the recent rate increases in the United States.

In dealing with the matter of increases in crushed stone rates, the following language was used in the judgment in *The Eastern Rates Case*:—

"Credit being given to the fact that this traffic loads to the full capacity of the cars, and that 40 and 50-ton cars are employed in the service, the rates are undoubtedly still very low, as they must needs be for the bulk of the traffic, yet the increase desired is moderate, viz., 5 cents per ton uniformly throughout the special list, regardless of the amount of the rate or of the length of haul. It is not proposed to raise the scale itself, but only the lower specific rates; nor does the application affect stone for fluxing and other manufacturing processes, it being regarded in this connection as raw material. In view of the consideration that these commodities have evidently received from the carriers, I am of the opinion that the increase asked for is not unreasonable."

The increase as allowed was thus limited to the commodity rates. In *The Fifteen Per Cent Case*, an increase was permitted "by adding to existing rates not more than 5 cents a ton."

While the agricultural lime rate when the application was launched was on the basis of 80 per cent of the crushed stone mileage scale, plus 5 cents per ton, this proportionate adjustment has been subject to revision as a result of the judgment in *The Fifteen Per Cent Case*. The result is that while there is a commodity rate basis, which is lower than the revised crushed stone mileage scale, the addition of 15 per cent to the commodity basis hitherto existing leaves the rate at, in the case of Toronto mileage, approximately 95 per cent of the crushed stone mileage scale. But what is in reality

involved is a comparison of the commodity mileage scale on agricultural limestone with the special commodity rates on crushed stone. To various large consuming points there has, taking into consideration the volume of movement, been put in low commodity rates on crushed stone. *Application of the Provincial Stone and Supply Company of Toronto, re commodity rates on crushed stone. File 1179.43.* Aside from points so treated on account of volume of movement, the mileage scale applies.

Agricultural limestone is shipped almost exclusively, in bags, in box cars. Ninety per cent of the movement is stated to run 60,000 pounds per car. The minimum provided is 60,000 pounds, unless the marked capacity is less, but subject to a marked capacity of 40,000 pounds. On crushed stone, the minimum is 70,000 pounds, subject to marked capacity and not less than 40,000 pounds. As crushed stone moves in 40 and 50-ton cars, the maximum loadings, allowing 10 per cent for overload, would be 88,000 and 110,000 pounds, respectively.

The mileage from Kirkfield to Toronto is 75 miles. The rate on agricultural limestone, in packages is 6 cents per 100 pounds. In view of the fact that the Board has held that it would not be justified in directing the extension to points not supplied with commodity rates of a lower basis on crushed stone than the mileage scale, the comparisons made are limited to the Toronto movement.

Crushed stone loads heavier than the agricultural limestone. The lower commodity rate on crushed stone is based on volume of movement. No evidence has been submitted showing that the movement of agricultural limestone is comparable with that of crushed stone.

In the hearings in *The Eastern Rates Case* Mr. Bayley, on behalf of the Ontario Government, submitted an estimate placing the average annual needs for crushed stone for improved roads at approximately 750,000 tons. Mr. Boyle, of the Provincial Stone and Supply Company, estimated his business for the year at 135,000 tons. Mr. Essery stated that Toronto was the principal point to which he shipped crushed stone, this point taking 63,000 tons out of 75,000 tons shipped. While exact information as to the tonnage of crushed stone used in Toronto was not submitted, it was stated in evidence by Mr. Essery (vol. 226, at p. 2111), that this tonnage had increased from 6,000 to 7,000 tons in 1905 to over 400,000 tons at the date of the hearing.

It is possible that there has been a falling-off since the date above referred to, but the figures referred to may be taken as roughly indicative of volume. In the present application, it was stated in evidence by Mr. Essery, of the Crushed Stone Company, that his shipments of agricultural limestone to Toronto were 2,000 tons, while Mr. Henderson, of the Henderson Company, had shipped 6,000 tons.

It was not established that crushed stone and agricultural limestone moving into Toronto could in any way be considered as competitive commodities. Agricultural limestone shipped to Toronto for use in manufacturing fertilizer was stated by the applicant company to be priced at \$2.80 f.o.b. quarry Kirkfield. A price of \$2.75 was also mentioned. Taking the figures of crushed stone supplied to the city of Ottawa, the Board is advised that "run of crusher" may be taken as characteristic of the crushed stone supplied to the city. The price for this, including cartage, is \$1.97 per ton or, deducting average cartage charge of 75 cents, a price at the quarry of \$1.22 per ton. The agricultural limestone price per ton at the quarry is thus 225 per cent to 229 per cent of the crushed stone price, while the rate on agricultural limestone to Toronto is 171 per cent of the commodity rate on crushed stone. Putting it another way, crushed stone with 43 per cent of the value of the agricultural limestone paid on the commodity basis 58 per cent of the agricultural limestone rate.

As pointed out, the computation given above is based on a comparison of prices of "run of crusher" with agricultural limestone. The Board has been furnished with a statement of prices of all stone delivered on the job in connection with city work in Ottawa. The prices relate to rubble, run of crusher, 2-inch screen, double screened $\frac{3}{4}$ -inch and under including dust, and clean pea line. As pointed out above, run of crusher is characteristic. The price on these articles as given varies from \$1.25 to

\$2.63 per ton. From these, in each case, has to be deducted the average cartage charge of 75 cents per ton, leaving an average price of \$1.23 at the quarry.

Considering all pertinent factors, it has not been established that the existing rate basis is unreasonable.

The Assistant Chief-Commissioner and Commissioner Goodeve concurred.

June 18, 1918.

ORDER No. 27378.

In the matter of the complaint of the Crushed Stone, Limited, of Toronto, and the Henderson Farmers' Lime and Phosphate Company, of Woodstock, Ontario, against the increased rates charged by the Grand Trunk Railway Company on agricultural limestone and stone dust from Kirkfield, Ontario, to various points.

Files Nos. 26786.4 and 26786.

FRIDAY, the 28th day of June, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, February 15, 1918, the complainant company, the Toronto, Hamilton and Buffalo, the Grand Trunk, the Canadian Pacific, and the Canadian Northern Railway Companies, the United Farmers of Ontario, the Guelph Agricultural College, and the Canadian Freight Association being represented at the hearing; and what was alleged; and upon the report of the Chief Traffic Clerk of the Board,—

It is ordered: That the complaint be, and it is hereby, dismissed.

D'ARCY SCOTT.

Assistant Chief Commissioner.

Application of the Municipal Council of the City of Victoria, B.C., for an Order apportioning the cost of maintaining the pedestrian traffic over the existing bridge of the Esquimalt and Nanaimo Railway Co., Victoria Harbour, B.C.

File No. 11118.

JUDGMENT.

MR. COMMISSIONER BOYCE:

The parties were heard upon the above application at Victoria B.C., on June 4 last. The City of Victoria asked for an Order of the Board apportioning the cost of maintaining pedestrian traffic over the Railway Company's bridge across Victoria Harbour.

It is unnecessary to rehearse the history of this bridge. The subject has been before the Board in different aspects on four previous occasions, namely, October 29, 1909, September 1, 1910, June 28, 1916, and June 5, 1917.

The Mayor of the City filed at the hearing a bill of \$2,151.90, being half the cost of approach from the bridge to Johnson Street and interest thereon, and half the

rental paid by the City for land occupied by crossing up to May 31, 1918, and interest on that amount.

Mr. McMullen, who appeared for the Railway Company, objected, generally, to the jurisdiction of the Board, and especially to the authority and jurisdiction of the Board to deal with any question of cost in this application.

I am of the opinion that the objection is well taken and that no case is made out for an Order apportioning the cost as asked. The bridge originally was not a work over which, under Section 59 of the Railway Act, the Board had any jurisdiction. As pointed out in the Judgment of the Chief Commissioner of March 30, 1913, upon another application respecting the same bridge, it appears that the bridge was built by the Railway Company under the authority of an Order of the Governor General in Council, approved August 26, 1887, and the whole cost was defrayed by the Railway Company. So thankful was the City of Victoria to get this bridge constructed that when in 1887 it became an assured fact, the then City Council passed a resolution tendering the thanks of the Council to the Railway Company "for their liberality," and expressing the opinion "that the extension of the line to Victoria will "confer a great boon on the citizens thereof."

In the course of the argument His Worship the Mayor of the City of Victoria based the claim for apportionment of cost upon the fact that this Board had provided for such distribution of cost. It was pointed out to Mr. Todd at the hearing, and is unquestionably the fact, that what was said by the Assistant Chief Commissioner in the expression of an opinion dealing with an altogether different phase of this much disputed question, was not intended to be the opinion of the Board, and was not concurred in or referred to by any other member of the Board, and, being a matter not directly before the Board for consideration, the reference cannot be regarded in any degree as an authority for this application.

I fail to find any authority upon which this application can be based. It is contended that the Board made an Order against the Railway Company for the use of the bridge by the public, and that, therefore, there is jurisdiction under Section 59. The only Order to which such a contention can refer would be Order No. 27251, of May 29, 1918, which provides that the Railway Company is directed to continue to permit the passage of pedestrians over the said bridge where sidewalks have been constructed and used for that purpose. The Judgment of the Chief Commissioner upon which such Order was based, (as was the concurring Judgment of Mr. Commissioner McLean), expressly negatives any such construction as that which is sought to be placed upon the Order and which the wording of the Order itself does not justify. The Chief Commissioner says in the closing paragraphs of his Judgment.

"I should also point out that under the Act the Board has no jurisdiction to order a combined highway and railway bridge. No Order can here be made, except that the Company be ordered to continue to permit the passage of pedestrians over the bridge where sidewalks have been built for that purpose."

And the Order went only that length and no farther, and does not, within the meaning of Section 59 or of any other section under which such an application could be made, constitute the foundation in law for such an application as to distribution of cost.

In my opinion the application fails and must be dismissed.

JUNE 24, 1918.

The Assistant Chief Commissioner concurred.

Application of G. H. Furnival, of Edmonton, Alta., that his application be renewed in respect of damage claims against the Grand Trunk Pacific Railway Company re Lot No. 16, Block 13, River Lot 14, Edmonton 105th Avenue (Old Clark Street).

File No. 13372.

JUDGMENT.

MR. COMMISSIONER BOYCE:

This case was heard at a sitting of the Board at Edmonton on the 11th June last, and, after hearing representations of counsel for both parties, an inspection of the property in question was made.

This is a long standing complaint. It originated before this Board by application dated January 8, 1910. It was on the list for hearing at the sittings in Edmonton, September 19, 1910, and was ordered to stand for six months. It was then on the list at Edmonton, September 11, 1911, when judgment was reserved with a direction to the Engineer to examine and report on the property, which he did, and his report, dated October 3, 1911, is on file. From that report I extract the following as indicating the situation at that time.

"The above crossing is in the same condition as it was when the Board visited it on a previous occasion, and whereas, it is somewhat inconvenient to make this crossing on account of a slight grade. I do not think that the property on Lot No. 16 is to any great extent hurt. There is a scheme now on hand between the City of Edmonton and the railway companies to have the tracks of the Canadian Northern Railway and the Grand Trunk Pacific Railway brought closer together, in order that the city might construct a subway, or subways, at the different crossings. If this is done in the near future, it will altogether change the layout of the crossing where Clark Street crosses the Grand Trunk Pacific Railway."

Mr. Commissioner McLean delivered an opinion, concurred in by the then Chief Commissioner, that in view of the question of bringing the tracks of the C.N.R. and G.T.P., closer together so as to facilitate a possible subway construction, which would change the situation suggested, no such direction as was asked for could be made. The direction asked for at that time was the same direction as is now asked for, namely, that the Board direct the Grand Trunk Pacific Railway Company to treat with the complainant in respect of damage alleged to have been sustained by him by the construction and operation of railway tracks across Clark Street, on which his said property is situated.

Since the judgment above referred to was rendered, desultory correspondence extending over many years has taken place, and at the request of the complainant the matter was again set down for hearing at Edmonton at the sittings on the 11th instant.

The only authority upon which the Board could have made such an Order as asked for by the complainant, is contained in Section 235 as amended by Section 6 of Chapter 22 1-2 Geo. V. (1911) assented to May 19, 1911. That section (235) was amended in accordance with the judgment of Their Lordships of the Privy Council in *G.T.P. Ry. vs. Fort William Land Investment Co.* (1912, A.C., p. 224) on appeal from a judgment of the Supreme Court of Canada affirming a decision of the Board of Railway Commissioners.

The Order asked for by the complainant is in substance exactly that which was asked for in the Fort William case. His application must necessarily fall under Section 235 because his land was not taken, and it is questionable to what extent it was injuriously affected by the construction of the railway. The claim of the complainant will have to be decided according to the power of the Board existing at the date of the complainant's application to direct the payment of compensation for lands

adjoining or abutting a railway which, by sanction of the Board, is carried across or along a street on which such property abuts. At the time that the railway made the crossing and constructed its line with the alleged damage to the plaintiff's property complained of, there was, as was thereafter held by the Privy Council in the Judgment referred to (November 2, 1911), no power in this Board to award compensation for such injuries, or to impose terms upon the railway company as to making compensation with regard to lands so adjoining or abutting the railway at such crossings.

For the reasons mentioned in the Judgment of the Privy Council, the specific matter of the complaint would not fall within Sections 47, 159, 237, or any of the other sections of the Act. The crossing having been provided for and application having been made to this Board in respect thereof prior to the amended Section 235 coming into force (May 19, 1911), I am of the opinion that this Board has no jurisdiction to make an Order either (a) directing the railway company to make compensation to the complainant, or (b) directing the railway company to treat with the complainant with a view to awarding such compensation.

It was represented at the hearing that, in consequence of an agreement between the City of Edmonton and the G.T.P. Railway Company, it was incumbent upon the city to adjust matters of injury to property caused by the construction of the railway in the city at such crossings as this, and it appeared to be represented that this was a case which would fall within the scope of that agreement. It is to be hoped, therefore, that if any damage has accrued to the complainant by reason of the construction of the road, that he will not be without his remedy under the provisions of that agreement or otherwise at law. The complaint must be dismissed.

June 25, 1918.

The Assistant Chief Commissioner concurred.

Application of the Municipalities of Burnaby and Coquitlam, B.C., for an Order requiring the Vancouver, Victoria and Eastern Railway and Navigation Company to complete the work required to be done under Order No. 26260, dated August 10, 1916.

File 572-45.

JUDGMENT.

MR. COMMISSIONER BOYCE:

By Order No. 25260, dated August 10, 1916, after a hearing at Vancouver, June 26, 1916, the Board approved the changes in the line of the Vancouver, Victoria and Eastern Railway near Sapperton, B.C., which changes involved:—

“(a) a change of alignment at the crossing of the North Road, in the District of New Westminster.

“(b) the diversion of Brunette Road, on the line “D,” “E,” “F” shown on the plan, and the closing of the portion of the Brunette Road coloured yellow on the plan.

“(c) the construction by the Applicant Company, at its own expense, of a bridge carrying the North Road over the line of railway as now proposed to be constructed.”

The bridge to be constructed over the North Road was to be built of steel, with a width of 24 feet on the roadway, and with 6 feet sidewalks extending on each side, detail plans showing the proposed bridge to be filed by the Railway Company for the approval of an Engineer of the Board, and the new bridge was to be installed and completed within one year from the date of the Order. By Order 26342, dated July 20,

1917, time for completion of the bridge was extended until January 1, 1918, no objection to the extension being offered on behalf of the Municipality.

Plans of the proposed bridge were duly submitted to the Board and to the Municipality, in accordance with the Order above referred to, and were approved by the Chief Engineer of the Board April 4, 1917. The Municipality received the plans of the proposed structure on March 20, 1917, and as they were not approved by the Board's Chief Engineer until April 4 following, there was ample time to object to any structural features had the Municipality been dissatisfied. No objections were raised, however, and, after approval of the plans, a copy was sent to the Municipality under dated April 4, 1917, with a statement that the plans had been so approved. Receipt of this plan was acknowledged by the Clerk of the Municipality under date April 12, 1917. The subsequent complaint of the Solicitors of the Municipality, addressed to the Board, that the plan was approved before the Engineer of the Municipality had an opportunity of seeing it, does not seem to be a meritorious one. Under date April 16, 1917, the Solicitors of the Municipality submitted the suggestions of their Engineer as to the plans, which are as follows:—

“Length of Bridge.—The bridge is to be of two spans of a total length of 175 feet (measured along the centre line) whereas one single span of approximately 50 feet is all that is absolutely necessary to provide for existing requirements. This would of course necessitate the construction of Abutments with Wingwalls to retain the earth slopes but the greatly reduced quantity of steel required would partly offset the additional cost of the concrete Abutments.

“Abutments.—The Northerly Abutment is of concrete but the Southerly Abutment is of timber piles, etc., of temporary construction and is therefore objectionable.

“Protection Fences.—The proposed fence of two rails of 2 inches by 4 inches is not adequate or sufficiently substantial. A strong close boarded fence should be required.

“Flooring of Bridge.—It should be stipulated that the timber should be of the best obtainable clear and close-grained sized fir. All timber used in the bridge should be thoroughly creosoted to materially add to its strength and durability.

“Lighting of Bridge.—Provision should be made for the adequate lighting of the bridge at the expense of the Railway Company.

“Accommodation for Water Mains, Pole Lines, etc.—The company should be required to take care of existing corporation water main and pole lines of light, power and telephone companies during construction and where disturbed subsequently to re-establish same in a satisfactory manner.

“Painting.—The railway company should be required to paint the bridge in a proper manner immediately after construction.”

The suggestions made, as above quoted, and in an accompanying memorandum, were of an exacting nature, some of them, perhaps, unreasonably so, and most of them were not contemplated by the Order. They were received after the plans had been approved, but were dealt with and reported upon by the Board's Engineer, and his conclusions, as approved by the Board, were communicated to the applicant municipality by letter, dated 10th July, 1917. The objections raised were dealt with as follows, viz.:—

“1. *Grade of Bridge.*—The plans approved show a 2 per cent grade, as asked for by the municipality.

“2. *Length of Bridge.*—The municipality states that the plans should show the entire structure ultimately proposed to be constructed to take care of the yard tracks. It appears from the plan that the company has made some provision for future requirements; but it is quite likely that the company does not

know just how long the structure ultimately proposed to be constructed to take care of these yards will be, so that it is impossible to show such general outline as asked for by the municipality.

"3. *Maintenance of Bridge*.—The Board agrees with the opinion that the company should be required to bear the whole cost of the maintenance of the structure with the exception of the maintenance of the street surface and the sidewalks, the cost of maintenance of which must be borne by the municipality.

"4. *Lighting of Bridge*.—It has not been the practice of the Board to require railway companies to light railway crossings or bridges. This obligation has always been placed upon the municipality.

"5. *Accommodation for Water Main and Pole Lines*.—These must be taken care of by the company in construction of the bridge.

"6. *Uninterruption of Traffic*.—The roads must be kept open for traffic during the construction of the bridge.

"8. *Abandonment of Existing Crossing, etc.*—The existing crossing must be abandoned as soon as practicable, as suggested by the municipality.

"With reference to ss. A, B, and C of paragraph 8, the Board's Standard Regulations Affecting Highway Crossings provides for the kind of fence which shall be built on the approaches. The other matters referred to are purely questions for the Municipality."

Following this communication, the Railway Company applied formally for the extension of time for construction of the bridge hereinbefore referred to, and the Municipality's Solicitors, under date July 28, 1917, without commenting further upon the objections submitted, or upon the answers thereto, above quoted, and which latter they had then received, advised the Board that no objection would be raised to the application for extension, and Order went accordingly.

The bridge and approaches were completed and the straightening of highway of North Road, and closing of a crossing theretofore maintained as to a moiety by the Municipality was dispensed with prior to March 1918, at an expenditure of approximately \$47,000.00. In doing the work the Railway Company, without obligation on its part, straightened and widened the road at South approach to the bridge and eliminated the crossing referred to, thus greatly improving the highway and permanently relieving the Municipality of the burden of its share of the crossing protection.

The Municipality's Solicitors, after the work was said to have been completed, wrote under date March 22, 1918, submitting to this Board a report of its Engineers upon the work, which is on file. The report is a criticism of the work, exacting and voluminous in character, and while it largely dealt with unimportant matters and many that had already been ruled upon in the previous reply—before construction was commenced, of the Engineer of the Board, above quoted, (and to which the Municipality offered no reply or dissent) the complaint was set down for hearing at the sittings of the Board at Vancouver, B.C., on the 6th June last, when, after an inspection of the locus in quo, the parties were heard.

The evidence at the hearing indicated no faulty construction, nor any divergence from the plans approved by the Engineer of the Board, after submission to the Municipality. The complainants relied largely upon the suggestions filed and hereinbefore referred to. One matter of importance was the fact that the South abutment of the bridge was of timber, and, therefore, of a temporary character. This was intended to provide for the necessity, at no very distant date, of widening the cut to permit of additional railway trackage underneath, and it is clearly understood that when that contingency occurs, the Railway Company is to put in permanent concrete abutments at the South side, and in the meantime maintain the temporary Southern abutment in efficient state of repair. The Order will so provide.

On the inspection and at the hearing, reference was made to the necessity of extending the abutment walls on the North side to prevent slides which it was appre-

hended would endanger the road surface on that side. The walls, of concrete, were built according to plan, approved, after submission, as aforementioned, and appear to be sufficient for their purpose. True there have been some slides of mud, one resulting from unusually heavy Spring rains and movement of newly disturbed ground, causing some injury to the roadway. This was promptly and effectively repaired by the Railway Company.

There was also specific complaint that on the West side at the Southern end of the bridge (where the temporary timber abutment is built), weep holes should be made in the timber retaining wall to prevent mud sliding and injuring the road above. That road was the new road, or straightened portion of the old road referred to which the Railway Company constructed 24 feet wide, with the advantages to the Municipality which I have pointed out. The timber retaining wall was built by the Railway Company, and is generally sufficient for the purpose for which it was put in. I do not think that because the Railway Company built this road, and eliminated a crossing which relieved a financial burden from the Municipality, it should be required to maintain it in repair. It is no part of the bridge, or incident to its construction, and there will be no Order with reference to it.

After a careful examination of the bridge, road and surroundings, and consideration of the opinions and suggestions of complainants and railway company's engineers, verbal and written, as also of those of the Board's engineers, in answer to or explanation of the numerous but not serious complaints, I am of opinion that the complaint of the municipality has little merit. The bridge has been built, and well built, according to plans, and is a very satisfactory and imposing structure. The municipality gets, at the expense of the railway company, a better road than it ever had and it is relieved of the level crossing, also half the cost of its maintenance. The public road has been straightened, widened and improved, and to do all this work the railway company has spent approximately close on \$50,000.

In all other respects I agree with the disposition of complaints contained in the memorandum of the engineer of the Board, contents of which were communicated to the complainants in letter from the Board to complainants' solicitors of 16th February, 1917, and quoted hereinbefore. The complainants deal almost entirely with apprehended weaknesses or faults, and refer to no structural defect. I think they did well in their bargain and have been fairly, honestly and generously dealt with, and, subject to what I have said as regards the temporary abutment at the south end of the bridge, I find the complaints, as now presented, of such a fanciful, apprehensive, or unsubstantial nature that no Order can be made with reference to them.

I would dismiss the complaint, but with leave to apply to the Board as regards any of the matters arising out of the temporary timber abutment supporting the southerly end of the bridge.

June 25, 1918.

The Assistant Chief Commissioner concurred.

Application of the Hull Electric Railway Company for authority to file tariffs providing for a general advance in the tolls for the carriage of passengers and freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439.7.

JUDGMENT.

MR. COMMISSIONER McLEAN:

Application is made by the Hull Electric Railway Company for authority to file tariffs providing for a general advance in the tolls for the carriage of passengers and freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

At the hearing, counsel for the town of Aylmer desired to have an opportunity to file a written statement of the town's position in the matter. Leave was granted ten days being allowed for filing said statement; and, on subsequent request, additional time was granted. The written submission of the Town of Aylmer is now before the Board.

The answer states that the Town of Aylmer and its people would be seriously injured by the increases proposed. Reference is made to the effect the increased passenger rates would have on the summer population of Aylmer. It is contended that the railway has only limited freight facilities and that the freight rates charged from Ottawa to Aylmer are already sufficiently high, and much higher, in proportion to distance, than on most steam railways.

The answer states:

"The company seeks to justify its application for increase of tolls on three grounds, viz.: (1) increased costs of material, equipment and labour; (2) increased operation ratio for the eight months commencing July 1, 1917; and (3) the necessity of doing work of maintenance which has been deferred."

It is contended that the grounds referred to do not justify the application and that the company's statements are incomplete, inaccurate and misleading.

It is admitted that costs of materials have increased, it being stated, however, that this is "largely owing to unusual and temporary conditions." It is contended that costs have not increased in the same ratio as contended by the railway; and it is further contended that there has been an increase in the company's revenue from the operation of its road during the past year and recent years which more than compensates for any increase in expense of operation and maintenance.

The company's submission as to the increase in the operating ratio for the eight-months beginning July, 1917, is regarded, in the answer, as being misleading on the ground that it includes months in which, on account of winter conditions, there are heavy operating costs, while at the same time it excludes four more profitable months, whose greater traffic would bring down the ratio.

There is introduced into the answer certain contentions bearing on the matter of lighting service and charges as well as railway service; the absence of compensation to the town for the use of its streets by the railway; and the alleged higher charges for electric light as compared with those charged in the city of Hull. Reference is made in the answer to disagreements as to the terms on which the railway operates in Aylmer, it apparently being alleged that whatever franchise rights there were have ceased. The merits of the contentions above set out do not appear to be germane to the present application, nor do the contentions as to the status of the franchise rights in any way involve matters falling within the jurisdiction of the Board. It is not alleged that there are or have been any franchise provisions which in any way limit the rights of the company in respect of the fares or tolls it may charge within the town of Aylmer.

A franchise agreement with the City of Hull exists whereunder limitations are imposed upon the Company's rate-charging power. The limitations so imposed are not being interfered with by the Company in the application before the Board.

The railway, according to its returns to the Department of Railways and Canals, has 15.67 miles of first main track; 12.15 miles of second main track—giving a total of 27.82 miles of main track. To this are to be added 3.49 miles of turnouts and sidings, which gives a total, computed as single track, of 31.31 miles.

The Company has \$292,000 of common stock. This, however, includes the stock both of the Power Company and of the Electric Railway. This, in the returns made in the present application, is allocated between the Power Company and the Railway Company in the ratio in which the stock outstanding against the Power Company stood to the stock against the Railway Company at the date of purchase of the property by the present owners. Approximately 61.6 per cent of the stock, or \$180,000, is

allocated to the railway. This stock has not during the period under review, nor at any earlier period, paid any dividends.

In the returns to the Department of Railways and Canals, there are included details both as to the earning power and expense of the Power Company and of the Railway Company. As the present application is concerned with the propriety of the rate advances asked for by the railway, the entity which is subject to the Board's jurisdiction, it is to the railway figures that attention must be directed.

The further fact that the electric railway is controlled by the Canadian Pacific Railway does not justify injecting into the analysis the prosperous conditions of the controlling railway. The matter must be looked at on its merits, in the light of the special conditions of the electric railway which is organized and operated as a separate and distinct railway.

The Company has no bonded indebtedness. The capital instead of being so furnished has been obtained by loans which are furnished by the Canadian Pacific at current rates of interest. These loans are, in fact, the invested capital. The rate at present charged is 7 per cent. In the pre-war period, it was 5 per cent. The rate of 7 per cent is not contested as being unreasonable. There is to be borne in mind the restriction of funds in the loan market at present, and reference may also be made to the rates obtaining on Government bonds. In the franchise arrangement of the Montreal Tramways Company, which is attached as Schedule A to the Statutes of Quebec of the present year, 8 Geo. V, Chap. 84, 6 per cent is recognized as a normal rate of interest. The justifiability of a higher rate on account of war conditions is recognized in paragraph 3 of Article 92 of said franchise, which provides—

“Upon all monies supplied for capital expenditure by the Company, from other sources than the aforesaid funds, during the continuance of the present world war, or within two years after its close the Company shall receive out of gross revenues an additional return of one per cent (1 per cent) per annum, provided such additional return shall not be paid for a period extending more than five years beyond the close of the war.”

Loans outstanding for 1914-1917 are as follows:—

1914..	\$666,665 20
1915..	688,783 91
1916..	689,844 38
1917..	700,190 71

For the year 1917, the total common stock and loans against the railway amounted to \$880,191.71, or \$56,242 per mile, computed on the basis of main line first track mileage. As against loans alone the figure is \$50,012.

The figures as above given may be compared with the figures held reasonable in the *London and Port Stanley Case* as a basis on which to compute returns, viz., \$74,465 per mile.

Of the years in the period under review, 1917 showed the largest earning power. The net earnings from operation, less taxes, when divided on the basis of main line first track mileage, are \$4,241 per mile. This may be compared with \$4,144 actual net earnings per mile in the *London and Port Stanley Case*.

The financial situation of the applicant company for the fiscal years 1915-1917, as set out in the Government returns, is as follows:—

	1915.	1916.	1917.
Gross earnings from operation..	\$154,862 54	\$157,800 88	\$197,785 25
Operating expenses.. . . .	118,875 87	124,537 49	129,849 83
Net earnings from operation.. .	<u>\$35,986 67</u>	<u>\$33,263 39</u>	<u>\$67,935 42</u>

The figures for 1917, as submitted at the hearing by the railway, differ from those above set out, in that the Park earnings, the earnings and expenses of which are con-

sidered as railway items and taxes, are included. Subject to this, the figures as submitted were:—

Gross earnings from operation..	\$197,785 25
Park earnings..	5,111 04
	<hr/>
Operating expenses..	\$202,896 29
Park expenses..	
Taxes..	
	<hr/>
	135,914 33
Net earnings..	<hr/>
	\$66,981 96

In the answer of Aylmer, reference is made to a charge in 1917 for hired power. It is set out that the company does business in selling power and in electric lighting, and it is contended that "the item of 'hired power' should be deducted from 'operating expenses,' or else the earnings from light and power should be added to the earnings."

The company's answer is:—

"In addition to the power generated by the company at Deschenes, a quantity is purchased for railway operation. The item 'hired power' is, therefore, properly chargeable to railway expenses. In so far as the railway is concerned, it must assume the proper charge for power, whether supplied from the power plant of the Hull Electric Company or any other source."

In the criticism of the railway's statement submitted by the town of Aylmer, it is set out that the net revenue from "Park Earnings," amounting to \$515.78, should be credited to railway operation. As already pointed out, this has been done. "Property Earnings" are shown at \$4,129.47, and it is stated that these "should properly be credited to the railway operation. The property earnings must refer to lease of car barns at Hull built for purposes of the railway, but which are leased for industrial purposes." The railway's answer is that the property earnings cover rental of grist mill and buildings at Deschenes, which are separate entirely from the railway, and that these earnings do not include rental of the car barn at Hull.

Exact information as to what the items in question represented might have been obtained from the books of the company and from its officials, extension of time for this purpose having been granted. From what is submitted, it does not appear that this was done.

The financial situation of the applicant railway for the fiscal years 1915-17 as to net earnings, less taxes, set out in the Government returns is:—

	1915.	1916.	1917.
Net earnings from operation less taxes..	\$35,050 07	\$32,062 00	\$66,466 18

For the period in question, the interest charges on loans were—

1915..	\$48,214 83
1916..	48,289 10
1917..	49,013 30

Summarizing the detail above set out, the situation is:—

	1915.	1916.	1917.
Balance after deducting interest on loans..	\$13,164 76*	\$16,227 10*	\$17,452 80
* Deficit.			

The passenger and freight earnings, as well as the number of fare passengers and number of tons carried are as follows:—

Year.	Passenger. Earnings.	Fare. Passengers.	Freight. Earnings.	Freight. Tons.
1915..	\$131,606 67	2,351,808	\$18,686 33	6,205
1916..	136,952 73	2,513,257	16,494 55	9,231
1917..	165,721 13	3,102,929	27,301 91	8,583

The total revenues of the railway are distributed as follows:—

	Passenger Earnings.	Freight Earnings.	Mail Earnings.	Express Earnings.	Miscellaneous Advertising, rent of Siding, rent of Equipment.
Year.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
1915	84.9	12.06	0.84	1.3	0.9
1916	86.7	10.7	0.6	1.1	0.9
1917	83.7	13.8	0.5	1.1	0.9

The railway states that the coming of prohibition in Ontario led temporarily to a considerable increase in revenue, on account of passenger traffic to the city of Hull. It is contended that with the advent of local option in Hull on May 1, 1918, this adventitious addition to passenger revenue has passed. Its position is:—

“1. The Hull Electric Company's application in this matter covers returns for the years commencing July 1, 1916, and the eight months of the year commencing July 1, 1917—periods during which prohibition was in effect in Ottawa. During this period the operating ratio increased from 67 to 74 per cent. Prior to the advent of prohibition the operating ratio was as follows: For the year ended June 30, 1914, 75 per cent; 1915, 77 per cent, and 1916, 80 per cent. Thus the average operating ratio during the period when both Ottawa and Hull were under the license system and before the recent increases in the cost of labour and material had taken place was 77.3 per cent.

“Therefore, now that both cities are under prohibition, the applicant company has to face on the one hand a heavy reduction in traffic and on the other the increases in the cost of labour and material.”

It was also stated at the hearing,—

“MR. FLINTOFF: Yes, the result of that, sir, was that there was a large increase in our traffic to and from Hull handled at practically no additional expense, because it was a constant flow from Ottawa to Hull and from Hull to Ottawa, with the result that our operating ratio dropped in 1916 80 per cent down to 67 per cent, you see. Now, notwithstanding that favourable condition, owing to the increased cost of material during the succeeding year we jumped again from 67 to 74 per cent. The advantage has been removed entirely and we have got to go back practically to the traffic conditions when Hull and Ottawa were on the same footing, and we will be faced with a very much greater advance now on top of what would have been our normal operating ratio of 80 per cent. In other words, we lose this lucrative traffic and we still have to face not only the increase in cost of materials on the very heavy scale which I have outlined, but we have also to face the very heavy increase in the cost of our labour which will undoubtedly result from the award which is now under consideration.”

The passenger fares of the railway may be roughly grouped as follows:—

Zone 1 (Ottawa to Bissons)—a 5c. fare. Tickets have been sold six for a quarter.

Zone 2 (Broadview to Rivermead)—a 5c. fare. Tickets have been sold six for a quarter.

Zone 3 (Deschenes to Queen's Park, Aylmer)—a 5c. fare. Tickets have been sold six for a quarter.

The inter-zone fares work out as follows:—

Zone 1 to Zone 2—a 10c. fare. Tickets have been sold four for a quarter.

Zone 1 to Zone 3—a 10c. fare. Tickets have been sold three for a quarter.

The average fare per passenger was:—

1915.. . . .	cents.	5.60
1916.. . . .	“	5.45
1917.. . . .	“	5.34

Including transfers, the result was:—

1915..	cents.	5.37
1916..	"	5.24
1917..	"	5.16

Variations may take place in the density of traffic of a particular zone which cannot be explained in terms of a general condition. Subject to this, it may be noted that the year 1917 showed an increase of 589,672 fare passengers over 1916, with an increase in passenger revenues of \$28,768.40. This gives an average fare of 4.8 cents, which points to an important increase in short distance traffic.

The passenger earnings to the end of April, 1918, have been given in a special return.

The average earnings per month are substantially the same for this ten-month period as for the twelve-month period of 1916-17. With the end of April came the enforcement of local option in the city of Hull. The figures presented do not permit an exact measurement of what this adventitious business was. It is established, however, that there was an increase of business from this source.

The various cases in which rates of electric railways have recently been dealt with by the Board have amply established increases in cost. The statement submitted by the applicant railway shows an average increase in 1917 prices of 17.9 per cent over 1915 prices. This has not been adequately controverted.

An appraised valuation was made in 1915 by the railway on the basis of book values allowing for depreciation. This has been checked up by the railway to June 30, 1917, and gives a total cost, exclusive of land, of \$880,190.71. On this, depreciation at figures varying from $1\frac{1}{2}$ per cent to 7 per cent, according to the item, has been computed. The average is 3 per cent, amounting to \$26,405.72.

The Town of Aylmer, in its answer, refers to the Government returns and states:

"The company's report for last year shows, under current liabilities, which are more than covered by current assets, that it has on hand a depreciation and renewal fund amounting to \$48,806.53."

In answer to this, the railway sets out:

"The report to the department shows depreciation fund, \$48,786.53. Of this, \$12,856.11 was expended on additions and improvements during 1916 and 1917, and \$18,121.43 was expended during ten months of the current year, leaving a balance of \$7,808.99. Expenditures from this fund are essentially additions and improvements properly chargeable to this account."

At the hearing reference was made by the railway to deferred maintenance charges. It was contended by the town of Aylmer that the company's statements in this regard were incorrect and that the only considerable expenditure "which is contemplated during the current year or coming year is, it is submitted, in connection with the paving of portions of streets in the city of Hull under an agreement made between the company and that city."

The Company's reply is:—

"The work now being carried out in connection with the pavement of portions of the streets in the City of Hull is chargeable to Capital Account, and has not been included in the list of deferred maintenance. The following deferred maintenance work is being carried out at the present time:

Hull car shed roof..	\$ 300 00
Macadamizing and repairs to belt line..	1,475 00
Replacing 5,800 feet trolley wire..	1,350 00
Rebuilding telephone line..	750 00
New locomotive body..	2,000 00
Rebanding..	1,400 00

This of course, is in addition to current maintenance, which will be carried on to the usual extent."

In dealing with the question of rates, the Town of Aylmer sets out:

"The rates now charged by the Hull Electric Co. for hauling freight from Ottawa to Aylmer are sufficiently high, and much higher, in proportion to the distance, than on most steam railways. The Corporation of Aylmer submits that freight can be brought, at the present time, to that Town from Montreal or Toronto cheaper than from Ottawa, and that fruit can be brought from Niagara to Aylmer cheaper than from Ottawa to Aylmer. The rate charged by the Hull Electric on coal shipped from Hull to Aylmer is 32 cents per ton. To authorize an increase of 50%, as the Company demands, would be unjust to the people of Aylmer, and unreasonable."

The Company's reply is:—

"The freight tolls of the applicant company are on the same basis as those of the steam railways, which is the basis upon which the tolls of all the electric lines operating in Canada have been built. It is not the fact that the rates on freight from Montreal or Toronto to Aylmer are less than from Ottawa. The Class rates are as follows:

	1	2	3	4	5	10
Toronto to Aylmer.	51	46	40½	33½	26½	18½
Montreal to Aylmer.	43½	38	33½	27½	22	15
Hull to Aylmer.	10	8	7	6	5	4

To move freight locally from Ottawa to Aylmer, the C.P.R. interswitching rate would be added to the Hull rates."

"The existing rate on coal from Hull to Aylmer is 50 cents a ton, not 32 cents as stated by protestants. As pointed out at the hearing, the increase asked for in this rate is just the same as that granted by the Board to the Government operated London and Port Stanley Line. Furthermore, the local movement of coal is practically negligible, as it is all handled on through rates. It would appear that the protestants in comparing these rates had compared the rate per 100 lbs. from Toronto and Montreal with the rate per ton from Hull and Ottawa."

"The rates on fresh fruit, boxed, from the Niagara District to Aylmer are as follows:—

In lots of 10,000 pounds or less.	60 cents per 100 pounds.
Over 10,000 pounds.	53 " "
20,000 pounds and over.	38 " "

(See Tariff CP. E-2881, C.R.C., E-3222.)

The local rates on the applicant company's line between Hull and Aylmer on these fruits are—"L.C.L., 10 cents, and C.L., 7 cents.

"As the Board is of course aware, the movement of fruit locally from Ottawa to Aylmer is very small indeed. Our officials have no knowledge of a carload ever having moved."

Statements were submitted by the railway setting out operating ratios as a measure of rising costs. It has been held that while the use of the operating ratio as a measure of increased costs is not wholly satisfactory, at the same time it is difficult to suggest a better method of proof. *Society of Coal Merchants v. Midland Railway Company, XIV Railway and Canal Traffic Cases*, 100. It is manifest that ratios are approximately conclusive only when the periods and items concerned are comparable.

The railway sets out that for the eight months ending February, 1918, there was an operating ratio of 73.5 as compared with 66.7 per cent for the year ending June, 1917. The ratios for the years 1915 and 1916 had been 76.7 per cent and 78.8 per cent respectively. The railway contended that the reduction in ratio in 1917 was indicative

of the additional traffic caused by the "open bar" in Hull, at a time when prohibition was in force in Ottawa. It was contended that the increase in ratio in 1917-18, for the period as set out, showed that with increased traffic as compared with the earlier years, increased costs were lessening the net.

The town of Aylmer attacked the comparison as not being characteristic, since the full year 1916-1917 included returns for the more profitable summer traffic which were not included in the eight months' statement. As bearing on this contention, it may be noted that the eight months' period in question—two-thirds of a year—had 64 per cent of the gross revenue of the preceding year, while it had 71 per cent of the operating expense of the preceding year.

A supplementary statement bringing the returns down to the end of April has been filed. This shows operating costs of 72.3 per cent. This is open to attack on the same grounds as above. It may also be noted that the ten months in question, with 81.8 per cent of the gross operating revenue of the preceding year, have 88.3 per cent of the operating expense of the same year. There must be taken into consideration, however, the increased wage scale which has been effective since May 1, 1918. Bearing this in mind, it is improbable that the operating scale of the year ending June, 1918, will have as low a ratio as the preceding year.

Since the hearing, an award has been made by a board of conciliation under which increases in wages were recommended. These recommendations have been accepted by the railway and have been made effective as of May 1, 1918. In addition to the increases in wage rates, provision is made for time and a half in the case of over-time. The latter provision is new.

The May payroll for the years 1917 and 1918 shows the following results:—

	1917.	1918.
Conductors and motormen.. . . .	\$3,848 51	\$5,990 26
Car and motor repairs.. . . .	1,352 09	1,942 33
Car service.. . . .	2 97	62 16
Bridges and buildings.. . . .	53 47	27 50
Track and street repairs.. . . .	1,225 19	1,392 51
Trolley and bonding.. . . .	290 18	342 28
Railway power.. . . .	152 66	271 22
Park expense.. . . .	507 37	436 53
Salaries and expenses.. . . .	291 50	362 00
Total.. . . .	<u>\$7,724 94</u>	<u>\$10,826 99</u>

That is to say, an average increase of 42 per cent.

The following statement sets out detail as to the percentage increases and their effects.

Year ending June 30, 1917—	Wage Increase May 1, 1918.		
	Amount.	Per cent.	Increase.
Conductors and motormen.. . . .	\$45,000	45	\$20,200
Car and motor repairs.. . . .	15,000	42	6,300
Trolley repairs.. . . .	2,600	32	830
Track and street repairs.. . . .	9,000	25	2,250
Station expense.. . . .	3,900	30	1,170
Office salaries.. . . .	6,500	20	1,300
			<u>\$32,050</u>
Overtime.. . . .			2,950
Total.. . . .			<u>\$35,000</u>

The figures set out an average increase of 42 per cent.

If the increase of May were taken as characteristic, there would be an annual increase of \$36,242.

As already pointed out, 1917 was the best earning year the company has had. In that year, its net earnings amounted to \$66,981.96. The increased labour costs above set out would take 53 per cent of this figure.

The balance in 1917, after deducting taxes and interest, was \$17,425.86.

In summary, the situation is:—

Gross earnings on basis of 1917..		\$202,896 29
Operating expenses on basis of 1917..	\$135,914 33	
Additional operating expense—wage increases ..	35,000 00	
Taxes, basis of 1917..	1,469 24	
		<hr/> 172,383 57
Net earnings from operation..		\$30,512 72
Interest on basis 1917..		49,013 30
		<hr/> \$18,500 58
Deficit..		

To the extent that there are increases, if any, in traffic revenues, the situation will of course be bettered.

The increases in cost, and especially in wage cost, are clear and unmistakable. There is nothing before the Board to warrant an assumption that there will, under existing conditions, be such an increase of traffic as to take up these increased costs and in addition give a reasonable return on the investment. Nor is there anything established by way of showing that there are any economies or efficiencies neglected which economies or efficiencies if utilized might take care of existing costs.

The application as launched involved application for authorization of an increase of 15 per cent in existing freight and passenger rates, the increase in the case of coal being 15 cents a ton. In 1915 an application was made to the Board by the railway company for approval of its standard passenger rate, on a basis of 2½ cents per mile. Following this, an Order issued approving of the basis of 2½ cents, but subject to a condition as to special rates, the consideration of which is not material here. The situation is that under then existing conditions a standard rate of 2½ cents was approved. The present conditions as to cost have been set out.

A case for the increase in rates has been made out. This involves not only the authorization as to increase of existing special rates, but also of the standard rates as well. In the case of the passenger standard, this will now be authorized at 2.875 cents per mile. The increased rates may be made effective in fifteen days, contingent upon compliance with the statutory requirements as to publication of standard tariffs.

June 26, 1918.

The Chief Commissioner, the Assistant Chief Commissioner, the Deputy Chief Commissioner, and Mr. Commissioner Boyce concurred.

Application of the Board of Trade of Sidney, B.C., for the application of British Columbia Coast Terminal Rates to Sidney, B.C.

Heard at Victoria, B.C., June 4, 1918.

File 28385.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

Sidney is on the southeastern end of Vancouver Island. It is reached by the car ferry of the Great Northern Railway from Vancouver, and it is also reached by the Canadian Northern via car ferry to Patricia bay and thence by interchange of its railway with the railway of the Great Northern, which on Vancouver Island is called the Victoria and Sidney Railway. Sidney is not served by the Canadian Pacific Railway except by its coast and island boats which call at Sidney periodically. Sidney is not a port of call for any ocean-going vessel.

The applicants state that there is an arbitrary rate of 5½ cents per 100 pounds carload, and 11 cents per 100 pounds L.C.L., which is added to the coast terminal rates on all traffic to Sidney.

The Board of Trade of Sidney now applies for the cancellation of this arbitrary rate. Sidney is about 18 miles nearer Vancouver than is Victoria, via the car ferry and rail route of the Great Northern Railway. There are several industries established at Sidney, notably a saw-mill, a plant for the manufacturing of roofing, and a cannery. Sidney is not reached by rail by the Canadian Pacific Railway Company. Therefore, that company may be eliminated from the consideration of this matter as no case could be made out against it. The Canadian Northern only reaches Sidney over the tracks of the Great Northern (Victoria and Sidney) from a point of interchange about $1\frac{1}{2}$ miles from Sidney. Therefore, no stronger case could be made out against the Canadian Northern than against the Great Northern. The traffic over the latter company for Victoria passes over the same line as traffic for Sidney and it is hauled 18 miles longer distance at a lower rate than similar traffic to Sidney. If the circumstances and conditions of the traffic are substantially similar, subsection 5 of section 315 of the Railway Act prohibits a higher rate being charged to Sidney, unless the Board is satisfied that owing to competition it is expedient to allow the lower toll for the longer haul.

Victoria is a port for ocean-going vessels. There is actual competition via the Panama canal and other water routes with the Great Northern Railway service to Victoria. It is to meet this competition that the railway company maintains the lower rate to that city. There is no such competition at Sidney as it is not served by ocean-going vessels.

Under these conditions, I think the railway company is justified in maintaining the lower rate to Victoria without making it applicable to intermediate non-competitive points like Sidney. The reasonableness of the rates to Sidney *per se* was not attacked. Therefore this judgment deals merely with the competitive feature of the rates referred to.

On the evidence before us I think the application should be dismissed.

OTTAWA, June 26, 1918.

Commissioner Boyce concurred.

ORDER No. 27383.

In the matter of the application of the Board of Trade of Sidney, British Columbia, for an Order requiring the application of British Columbia Coast Terminal Rates to Sidney.

File No. 28385.

FRIDAY, the 28th day of June, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Victoria, June 4, 1918, the applicant, the Saanich Canning Company, and the Great Northern, the Canadian Pacific, and Canadian Northern Railway Companies being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

D'ARCY SCOTT,
Assistant Chief Commissioner.

Application of the residents of Massett, Queen Charlotte Islands, B.C., for a reduction in freight rates by the Grand Trunk Pacific Steamship Company from Vancouver and Prince Rupert, B.C.

File No. 28571.

JUDGMENT.

COMMISSIONER BOYCE:

This complaint was on the list for hearing at the sittings of the Board at Vancouver on the 6th June instant, and the parties were duly notified. No one appeared in support of the complaint, and counsel for the respondents showed cause.

Objection was taken to the jurisdiction of the Board to adjudicate upon the issues involved on the ground that the tariff filed, and in question, was a special local freight tariff (port to port) of the Grand Trunk Pacific Coast Steamship Company, Limited, which while admittedly a subsidiary company of the Grand Trunk Pacific Railway Company, was not, within the meaning of section 7 of the Railway Act, a company whose vessels were owned, chartered, used, maintained or worked by the Grand Trunk Pacific Railway Company, nor, as it was contended, was such railway company (within the meaning of such section) a party to any arrangement for using, maintaining or working the vessels of the steamship company for carrying traffic by sea or by inland water between any ports or places in Canada.

The tariff filed by the steamship company is a purely local, port to port, tariff applicable only for carriage by water between Victoria, B.C., Vancouver, B.C., Seattle, Wash., and ports of call on northern British Columbia coast service. No question of a through tariff was involved, and the principle of the decision in Dawson Board of Trade vs. White Pass and Yukon Railway Company, 9 C.R.C. 190, is not applicable.

While the Grand Trunk Pacific Railway Company is the parent company of the steamship company whose local tariff is attacked there is no such unity or relation between the two separate corporate entities within the meaning of the section referred to which would give this Board jurisdiction over the local port to port rates involved in the dispute. The two companies although, perhaps, having the same interests common to both, preserve their independent corporate existences, and must be treated as separate and individual entities for the purposes of this complaint.

This Board has never exercised any jurisdiction over port to port traffic, neither do I think that there is any authority conferred upon it by the Railway Act to do so. Wherever the Board has exercised such jurisdiction the water traffic has been a part of, and incident to, a through railway rate, and jurisdiction was assumed by reason of the railway and not the water character of the traffic. In the present case the rate is purely a local rate for water-borne traffic between local ports, no part of it being, by any stretch of imagination, attributable to railway traffic or the traffic of the railway company.

I am of opinion that this Board has no jurisdiction in this complaint.

Apart from the question of jurisdiction, and if the Board assumed jurisdiction in this matter, I should be very reluctant indeed upon the statements made at the hearing, to hold that, having regard to the nature of the traffic, the tariff was unreasonable.

There is considerable hazard in connection with the traffic, expense of maintenance of it is great, and for many years it has been very unprofitable. It is stated that only last year was there a surplus from the earnings of the company. Added to the above reasons it is very clear and ought to be a cogent and deciding factor, that the traffic is largely, if not altogether, of a temporary character and most of it is directly attributable to the state of war now existing, as appears from the statements made at the hearing. It is more than probable that at the termination of the war the traffic would relapse to the former unsatisfactory conditions. The tariffs do not bear such an unreasonable proportion to the marketable value of the commodities carried as would in any event justify the Board in going to the length of ruling that they were exorbitant and improper. It may be that there is some evidence in the complaint that

they are not normal tariffs, but it is also to be observed that these tariffs are applicable to an abnormal condition of things, and to an exceptional and special condition of traffic which is of a temporary character.

In my opinion the complaint must be dismissed.

June 26, 1918.

The Assistant Chief Commissioner concurred.

Application of the United Farmers of Alberta, for an Order that the Canadian Pacific Railway Company install a telephone at its station at Blackie, Alta.

File 8883.9.

Heard at Calgary, June 10, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

The local branch of the United Farmers of Alberta at Blackie, have applied to the Board for the installation of a telephone in the Canadian Pacific Railway Company's station at that point. The application is endorsed by the executive committee of the provincial organization. Evidence was submitted by the applicants to show the volume of business done in Blackie and the importance to the farmers in that locality in the way of saving of time if they were able to make their inquiries at the station by telephone instead of taking time to make a personal call. The railway company while disputing the Board's jurisdiction to grant the order, points out that if the company were to put in a telephone at Blackie similar applications would be made by residents in the vicinity of all their stations in the country.

It is useless to go into the merits of the case, because it is quite clear this Board has no jurisdiction to order a telephone company to put in a telephone. The only section of the Railway Act that in any way relates to the question of telephones in stations is section 245, which reads as follows:—

“Whenever any municipality, corporation or incorporated company has authority to construct, operate and maintain a telephonic connection or communication with or within any station or premises of the company in such district, and cannot agree with the company with respect thereto, such municipality, corporation or incorporated company may apply to the Board for leave therefor.

“2. The Board may order the company to provide for such connection or communication upon such terms as to compensation or otherwise as the Board deems just and expedient, and may order and direct how, when, where, by whom and upon what terms and conditions such telephonic connection or communication shall be constructed, operated and maintained.

“3. Notwithstanding anything in any Act contained, the Board in determining the terms or compensation upon which any such connection or communication is to be provided for, shall not take into consideration any contract, lease or agreement now or hereafter in force by which the company has given or gives any exclusive or other privilege to any company or person, other than the applicant, with respect to any such station or premises.”

That section does not deal with a case like the present where the applicants desire the railway company to bear the cost of the installation and maintenance of the telephone, but it covers the case of the railway company refusing to allow a municipality

or corporation which carries on a telephone business from putting one of their telephones, without charge to the railway company, in its station. See the Board's decision in *Peoples and Caledon Telephone Cos. vs Grand Trunk and C.P.R.*, 9 *Canadian Railway Cases*, 161; and, *Province of Manitoba vs. C.P.R.*, 21 *Canadian Railway Cases* 445.

As we have no jurisdiction to entertain this application it should be dismissed.

OTTAWA, June 27, 1918.

Commissioner Boyce concurred.

ORDER No. 27374.

In the matter of the application of the United Farmers of Alberta (Local), of Blackie, Alberta, for an Order directing the Canadian Pacific Railway Company to install a telephone in its station at Blackie.

File No. 8883.9.

FRIDAY, the 28th day of June, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, June 10, 1918, the applicants and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

Extension of Kinnear Yard at Hamilton, Ont.

JUDGMENT.

File No. 28230.

THE CHIEF COMMISSIONER:

Exception has been taken by the Toronto, Hamilton, and Buffalo Railway Company to the Board's direction that instead of an Order of expropriation going, the city might, if it so desired, lease the property for a term of five years. The company insists that an expropriatory Order should issue for the following reasons:—

"1. At the expiration of the lease, the company would be utterly unable to handle its business were the tracks to be pulled up and the property given back into the hands of the city. The use of the tracks at the present time is necessary beyond all question, and five years from now, with the continued growth of the country and traffic over the railway, their use would be vastly greater.

"2. The cost to the company of putting the property into shape for use by it during the term of the proposed lease would be entirely out of proportion to what the company would gain by it. There would be an unavoidable loss of about \$13,000. An approximate estimate of the cost of the work on the city property amounts to over \$24,000. We could not afford to incur the risk of such loss.

"I trust, therefore, that the Board, having found that the application is well founded and that the property in question is required in the public interest by the railway company, will see fit to make the usual Order under section 178 authorizing the company to take the land."

It cannot be disputed that the Board's direction is in ease of the municipal situation, nor can it be disputed that under ordinary circumstances the duty of the Board, on satisfying itself that the property is required in the public interest, is to issue an Order of expropriation.

The Hamilton railway situation cannot be so described, nor can it be described as satisfactory. The different reports that have been made at least deserve careful study. It may be that the railway finally will have to be left where it is. It may be again that it can and ought to be moved on fair and just terms; and the city's application having been made, the Board's view was and is that in case it is shown to be feasible to change the railway location, that change ought not be made unduly expensive and the property interests of the company left as near as may be as they now are until that question is decided.

The situation is really not that which the company seems to fear. There is no doubt as to the growth of Hamilton's industries and the necessity of tracks. I have no doubt that the same conditions will exist in five years' time, when, if necessary, an Order of expropriation can be made, but it is to be hoped that before the expiration of five years the permanent solution of Hamilton's railway problem will be evolved. This permanent solution must undoubtedly include proper and sufficient facilities for the T. H. & B. Railway. The application for an Order is not dismissed; the Board is seized of the matter. It is to be hoped that an Order of expropriation will never be necessary, but that both the municipality and the railways will recognize their common interests and adjust, within the period of the lease, the difficulties of to-day.

If necessary, an Order of expropriation can be made as well in five years' time as to-day. In view of the fact that the municipality states it is prepared to give the lease suggested, possession of the property can be had, and it well may be that no extra cost will be entailed upon the railway by the form in which it gets possession.

OTTAWA, June 27, 1918.

Mr. Commissioner Goodeve concurred.

Complaint of the Grain Growers' British Columbia Agency, Limited, against the switching rate collected by the Canadian Northern Railway Company, for New Westminster delivery.

JUDGMENT.

File No. 28511.

Heard at Vancouver, B.C., June 6, 1918.

THE ASSISTANT CHIEF COMMISSIONER:

In its Tariff C.R.C. No. W-884, the Canadian Northern Railway quotes rates to New Westminster. The applicants were billed on a car of grain delivered at their elevator on the C.P.R. tracks at New Westminster on February 13 last, $\frac{1}{2}$ cent per 100 pounds for C.P.R. switching and 1 cent per 100 pounds for Great Northern switching. The charge for C.P.R. switching is the correct one according to the Interswitching Order effective at that date. The Great Northern switching rate is the one which the applicants object to paying.

The Canadian Northern Railway Company has no track or terminal facilities of its own in New Westminster and it cannot deliver anywhere in New Westminster without using the tracks of the Great Northern. The company claims that it is

justified in assessing this charge on the complainants because Rule 1 of its Tariff C.R.C. No. W-884, p. 7, reads as follows:—

“Freight transported under this tariff is subject *in addition to the rates named herein*, to rules and regulations relating to . . . switching and / or interswitching and other charges . . . at points of origin, destination or en route, etc.”

In my opinion the Canadian Northern Railway Company is bound to have a place of delivery in New Westminster where it could deliver traffic destined to that city without the imposition of a switching charge on the shipper or consignee. Rule 1 of this tariff covers the case of the interswitching to the elevator on the C.P.R. tracks, but does not relieve the company of its obligation to have a point of delivery free from a switching charge in New Westminster. This obligation is placed upon it by its publishing a tariff quoting rates to New Westminster.

I therefore think that the railway company was wrong in billing the consignee with the 1 cent per 100 pounds rate for Great Northern switching, and an order may go permitting the company to pay back any monies it may have collected under such conditions.

OTTAWA, June 27, 1918.

Commissioner Boyce concurred.

Application of South Alberta Wool Growers' Association for a reduction in the minimum carload weight on sheep to 12,000 pounds, in single deck cars.

File 19475-52.

Heard at Calgary, Alta., June 12, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

Prior to July 1, 1914, the tariffs of carriers in Western Canada provided carload minimum weight on cattle, hogs and sheep, of 20,000 pounds for single deck cars, and shipper was permitted to double deck cars at his own expense.

Effective January 1, 1914, these carriers established a carload minimum weight of 16,000 pounds for a standard car on hogs and sheep. This reduction of 25 per cent the railway companies tell us was made voluntarily to assist the live stock industry in the West. It has been suggested, on behalf of the applicants, that as it is impossible to put 16,000 pounds of sheep into a single deck car, the rate should be reduced to approximately the weight of sheep that a single deck standard car would carry.

Mr. Lanigan, representing the Canadian Pacific Railway Company, stated at the hearing that his company had a number of cattle cars with a removable deck, so that where it was desired to load sheep or hogs in a double deck a double deck car could be supplied by the railway company. He said his company had had little demand for such cars. It is necessary that the double deck should be removable, so that the car can be used for other purposes.

At the present time, owing to the great demand upon the railway companies for cars to move supplies for the forces overseas, it would not be wise for this Board to encourage the loading of cars so much below their carrying capacity as a minimum of 12,000 pounds would be if it were established. The efforts of the railway companies, encouraged by this Board, are directed at the present time towards the securing of as near a capacity load for each car as is possible.

If a shipper wishes to put in a double deck himself, or secure a double deck car from the railway company he can load the present minimum. It is a matter of common knowledge that the value of mutton and wool has very materially increased since the beginning of the war. The railway companies' costs of operation have materially increased during the last few years, and I see no justification of this Board approving of what would be a reduction of 25 per cent in the railway companies' rates on sheep if the minimum applied for was established and was not exceeded in loading.

In my opinion the applicants have not made out a case for any change in the present minimum and the application should be dismissed.

OTTAWA, June 28, 1918.

Mr. Commissioner Boyce concurred.

Application of W. S. Henderson, of Drumheller, Alta., for a spur near the High Level Bridge at Lethbridge, Alta., on the line of the Canadian Pacific Railway Company, to serve a coal property:

File No. 27400.2.

Heard at Calgary, Alta., June 10, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

Mr. Henderson had a coal property adjacent to Belly river, about one and one-half miles distant from Lenzie siding on the Canadian Pacific railway. He applies to the Board for an Order that the Canadian Pacific Railway Company construct, or at least supply the steel for the construction of a siding from the railway to the coal property. The railway company have two objections: one, that steel is scarce and it is difficult for it to supply the rails; and the other, that it would be inconvenient and unremunerative to the company to operate the spur. If Mr. Henderson could deliver the coal to the railway company at its Lenzie siding the company would, of course, be glad to handle it. At present he is getting out about 25 or 30 tons a day. It is taken across the river on a cable and thence teamed about two miles to Lethbridge. This handling costs him about \$1 a ton. If Mr. Henderson could get the railway facilities he applies for, he says he expects to develop about 300 tons a day. This output he says would not justify him in building his own railway to connect with the Canadian Pacific railway at Lenzie, and he says the property can only be operated in a satisfactory way by the railway company doing the switching. Mr. Henderson is unable to say when he would have the property developed to the extent of an output of 300 tons a day. At present he would only give the company 50 or 60 tons a day—which would be a little better than a car a day. The railway company have no switching engine serving Lenzie siding or anywhere in that neighbourhood, and it objects to the delay to a freight train while a freight engine switches three miles to get a car or two or coal.

Mr. Henderson is unwilling to provide his own motive power to operate his proposed spur track.

During the present times, with a great scarcity of steel, and an urgent necessity for the strictest economy in railway operation, I do not think this Board would be justified in granting the application, particularly where there is a present outlet—though admittedly somewhat limited—for the coal from Mr. Henderson's property.

I think the application should be dismissed.

OTTAWA, July 2, 1918.

Mr. Commissioner Boyce concurred.

Complaint of John Abrey, Souris, Man., against the lack of fencing by the Canadian Pacific Railway Company across the bed of the Souris river.

File No. 28630.

JUDGMENT.

Heard at Winnipeg, Man., June 15, 1918.

THE ASSISTANT CHIEF COMMISSIONER:

The applicant is a farmer owning property bounded on the south by the Canadian Pacific Railway, and on the west by the Souris river. The railway runs east and west and crosses the river at right angles. The railway company have a fence on the north side of its right of way up to the river bank on each side of the river. There is considerable change during high and low water level in the river. When the water is high it comes up to the railway company's fence on each side. When the water is low there is a space between the end of the fence and the water in the river. Mr. Abrey's cattle at low water walk down the bank of the river and are able to wander southerly under the railway company's bridge to a highway which crosses the river south of the railway, and are able to stray away upon the highway, or they may be killed where the railway crosses the highway some distance east of the river.

The applicant wishes the railway company to continue its fence across the bed of the stream so that in low water cattle will not be able to escape from his property. The railway company's fence is turned in at each end of the bridge so as to prevent cattle from getting upon the railway company's lands.

The obligation of the railway company with regard to fencing will be found in Section 254 of the Railway Act, as amended by Chapter 50 of the Statutes of 1910, and Chapter 22 of the Statutes of 1911. In the present case the obligation of the railway company is to maintain a fence of a sufficient height that shall be suitable and sufficient to prevent cattle and other animals from getting on the railway lands. The railway company does not own any land over which the water of the Souris river flows. The railway company's land ends at each side of the bridge, and while it has the right to maintain a bridge over the river, it does not own any right of way on the bed of the stream. This being so, I see no statutory obligation on the railway company to erect and maintain a fence for which the applicant applies.

In addition to this the railway company contends that the stream is a navigable stream and that under Section 230 of the Railway Act it is prohibited from putting any obstruction in the river which would impede free navigation. While there was no evidence that this river is actually navigated, it is contended by the railway company that it is a stream where logs and timber may be floated, and that it is therefore a navigable stream. I think the railway company is right in this contention, and therefore not only is there no obligation on the company to build the fence applied for, but there is also a prohibition against the railway company placing a fence which would amount to an obstruction across the river.

The application should be dismissed.

OTTAWA, July 4, 1918.

Mr. Commissioner Boyce concurred.

Application of the City of Vancouver for an Order compelling the Vancouver, Victoria and Eastern Railway and Navigation Company to pay its proportion of the cost of the construction of the Hastings Street viaduct and other costs involved in connection with the proposed construction of viaducts on Pender, Keefer and Harris streets.

File 27095.

Heard at Vancouver, B.C., June 6, 1918.

JUDGMENT.

COMMISSIONER BOYCE:

Under Order No. 17840 authority was given for the construction, *inter alia*, of the Hastings Street viaduct at Vancouver. By Order No. 23074, dated December 31, 1914, the first-named order was rescinded in so far as it related to the overhead crossings at Pender, Keefer and Harris streets; leaving the order applicable to the Hastings Street viaduct, a dispute as to the cost of which is now brought before the Board by the application of the city of Vancouver "for an order compelling the Vancouver, Victoria and Eastern Railway and Navigation Company to pay its proportion (sixty per cent) of the cost of the construction of the Hastings Street viaduct, and any other costs in connection with the three other proposed viaducts on Pender, Keefer and Harris streets, Vancouver."

The railway company's proportion of the cost of the Hastings Street viaduct was fixed by the Board at sixty per centum, and to that extent the railway company became bound to pay, or reimburse the city of Vancouver for bona fide outlay on such work.

On June 26, 1916 (the work not then being fully complete so that a final amount could be ascertained), the city had rendered accounts to the railway company for the railway company's said proportion, which showed a sum of \$132,866.39 to be due by the railway company to the city; and, on that date, after a hearing at Vancouver, in presence of counsel for both parties, an order was made (No. 25225, July 3, 1916), directing the railway company to forthwith pay to the city the sum of \$50,000 "on account of work done under the said order or orders" (those referred to) "the said payment of \$50,000 to be without prejudice to the position of the railway company or any objection it may desire to make to any of the items of the account."

The condition quoted above was inserted in the order in consequence of the contentions of counsel for the railway company at the said hearing.

No further payment on account has been made by the railway company to the city, and the city now alleges that there is about \$82,000 odd still due, after crediting the \$50,000 paid by the railway company under the conditions of the order just referred to. The amount mentioned is stated by counsel for the applicant to be approximate, but statements showing the state of the account have been delivered to the railway company from time to time.

The railway company opposed the application now made. It contended that it did not owe the city "one cent." That it was not liable to pay this sum of money. That there are a large number of questions of law involved, including the "questions of judicial construction as to whether we are liable under any circumstances for any portion of this sum" (as was stated by the learned counsel for the railway company) and next as to the specific items—as to whether the company is liable at all for them, and the railway company insisted that the dispute as to the whole matter should be left to the courts to settle.

It appears that the railway company did not in any way commit itself by the payment of the \$50,000 on account. In making such payment under the last order (No. 25225) it further protected itself by taking an agreement in writing under seal from the city, undertaking to refund that sum in case it should be afterwards ascertained that the railway company was not liable for that sum—or, I presume, *pro tanto*,

as to any less sum found due. This agreement, though referred to by counsel, was not produced or filed.

The application then is (as was the one made to the Board resulting in the Order No. 25225) for payment of the money alleged by the applicant, but denied by the railway company, to be due in respect of balance of the railway company's share of cost of construction of this work. All questions of law involved must be incident to the matters of account over which the Board has exercised a proper jurisdiction by giving direction as to the proportions in which the respective parties are to contribute to the cost of this work. It was pointed out that the accounts were lengthy, too lengthy and involved to permit of them being dealt with satisfactorily in the short space of time available at the circuit sittings of the Board.

The gist of the complaint of the city of Vancouver is that this Board, by its order, having decided that the railway company should pay 60 per cent of the cost of the work, the railway company has failed to comply with the order. The railway company, on the other hand, denies that anything is due upon the accounts submitted to it by the city. If any question of jurisdiction is involved in the complaint now made to the Board it is necessary to ascertain, as far as possible with exactness, to what extent, if at all, the railway company is in default in observing the directions of the Board.

At the hearing, June 26, 1916, of the application for payment resulting in the order for payment on account of \$50,000, much discussion took place regarding the accounts, and the chief commissioner offered the services of the Board's engineer, should his services be desired, to assist the parties in adjusting and finally settling the accounts—but from what took place on the hearing of this complaint, involving the same disputed account, it is patent that only a judicial inquiry (or an inquiry of a judicial nature such as this Board has power to order) will effect a finality to a sharply disputed and long-standing account. The services of the Board's engineer, during the two years, were not called for and, though he is still available for assistance, I do not think that as arbitrator between the parties a settlement could be reached—and more delay might be involved by trying the experiment of referring the accounts to him.

I cannot see, that after a full investigation of the accounts there can be much room for further dispute between the parties as to the principle of the liability. At any rate nothing was disclosed at the hearing to the contrary.

It was suggested to counsel that the whole matter of the present pending complaint be referred by the Board, under section 60 of the Railway Act, for inquiry and report at Vancouver, where the inquiry can more conveniently, more expeditiously, and less expensively be conducted than by the Board. Counsel for the city agreed to such an interim disposition, and while counsel for the railway company did not assent he raised no objection and admitted that it might advance the matter.

I think, in the acute situation as to accounts which is disclosed, and in view of their length and possible intricacies, all involving delay and expense in hearing in the ordinary way, that it would be impracticable for the Board to take the account, and that the interests of all parties will be best served, and great expense, public and private, saved by invoking the provisions of the section (60) referred to—and which seems to be specially applicable to such a case as this.

I would, under section 60 of the Railway Act, appoint A. B. Pottinger, Esquire, District Registrar of the Vancouver district, of the Supreme Court of the Province of British Columbia (whose name was mentioned without objection, at the hearing) to make an inquiry upon all matters of account in the complaint now before the Board—with power to take the accounts between the parties and ascertain and report to the Board what amount (if any) is due to or by one to the other in respect of the work done and payments made under the terms of the Board's orders providing for or affecting the provision for the construction of the works in question, and on account of

which the city of Vancouver has paid money, a proportion of which the said railway company ought to pay. The referee to report to the Board on or before the 15th October next—and further questions, including the question of costs, will be reserved until after report is made. The referee will have power to report specially, if necessary, on any questions of fact or law, affecting the dispute before the Board. If necessary, the parties can then be heard.

The reference will be at the risk of the applicant as to costs. That must necessarily follow. The advantage is, that a long standing and much disputed question of account may be settled, leaving any special questions of law, or fact, to be dealt with after the referee shall have reported as to the condition of the accounts; the uncertain and intricate nature of which seem to obscure the possibility of a final settlement which it is to be hoped that the disposition now made will be the means of effecting.

The terms of the order can be spoken to and settled if desired.

OTTAWA, July 9, 1918.

The Assistant Chief Commissioner concurred.

Complaint of E. A. McKenzie, of Arden, Man., against the refusal of the railway companies to supply him with car doors for sand and gravel shipments or to pay him for doors supplied by himself.

File 4106-22.

Heard at Winnipeg, Man., June 15, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

The applicant ships from 50 to 150 cars of gravel or sand from his property at Arden, Man., to points both east and west of Winnipeg. The gravel or sand is required for the construction of concrete, and the applicant states that it is necessary for it to be shipped in box-cars to be kept dry. The applicant states that his experience is that the sliding doors with which box-cars are provided are not sufficiently tight or close to prevent sand or gravel from escaping from the cars during transportation and that it is necessary for him to apply a special door on the inside of the car to ensure the commodity reaching destination without a portion of it leaking from the car. He asks that the railway companies be ordered to supply special doors when sand or gravel is shipped in box-cars, or that an allowance be made to the shipper when he has to supply such doors. It is stated that these doors would cost about \$4 a car.

The Board has ordered the railway companies to supply special doors, or else to pay the shipper a certain sum for special doors in the case of grain shipments, and the applicant relies upon the Board's order in the case of special grain doors to justify his present application.

Sand and gravel move upon a much lower rate than grain. In other parts of the country a large bulk of it is moved by water, but where it is moved by rail it is handled in flat cars which, of course, do not require special doors.

The Board has not had a request similar to this from any other shipper of sand or gravel. The quantity of it that moves by rail is, of course, a very small percentage of the quantity of grain that moves by rail. To my mind it can in no way be compared with grain, as the circumstances and conditions concerning the sand and gravel traffic are quite dissimilar to those of grain traffic. Evidently Mr. McKenzie has some special conditions to cope with which are not found by other shippers of sand and

gravel. I do not think that his special case is a reason why the present conditions respecting the shipment of sand and gravel should be changed, and I therefore think the application should be dismissed.

OTTAWA, July 9, 1918.

Mr. Commissioner Boyce concurred.

Application of the Brandon Section of the Canadian Manufacturers' Association and other interested shippers in the city of Brandon, for an interchange track between the tracks of the Canadian Pacific and Grand Trunk Pacific Railway Companies, at Forrest, Man.

File 6713-125

Heard at Winnipeg, Man., June 15, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

The applicants contend that not only because of the volume of traffic to be interchanged between the Canadian Pacific Railway and the Grand Trunk Pacific at Forrest, but because of a moral obligation on the part of the Grand Trunk Pacific to give Brandon a connection with its railway this application should be granted.

It appears that when the Act to incorporate the Grand Trunk Pacific Railway Company was before Parliament some thirteen years ago, and it became apparent that the company wished to build its line ten miles north of Brandon without any connection to that city, the Brandon City Council made representations to Parliament which resulted in the railway company being authorized to construct a branch line to Brandon. In accordance with that power a branch line from the main line of the railway south to Brandon was commenced and graded to within a mile of the city limits of Brandon and a bridge over the Assiniboine river for the branch line was constructed by the railway company; but the line into Brandon has never been completed, and although constant effort has been made by those interested in that city the branch line has not been completed. The Canadian Pacific Railway Company has a branch line of railway running north from Brandon which crosses the main line of the Grand Trunk Pacific at grade at a point near Forrest on that railway. There is no physical difficulty in the way of the construction of an interchange at that point. We were informed that on an estimate made a year ago, the cost of the 1,355.8 feet of trackage necessary for the interchange would be \$2,690.

Brandon is a manufacturing and distributing centre. At present Brandon merchants are unable to do business on the Grand Trunk Pacific because of the delay of shipments between Brandon and Grand Trunk Pacific points, having to go easterly and then northerly to interchange at Petrel.

It was contended by the applicants that in the handling of coal for Brandon, from the Tofield district, there is serious delay in the present movement of coal from that district, which goes Grand Trunk Pacific to Melville, then back hauled from there to Regina, thence by Canadian Pacific or Canadian Northern to Brandon; whereas if the Forrest connection were put in a much shorter and quicker route for this coal to Brandon would be established. It is estimated that there would be about fifty carloads of coal to move in this way.

A sash and door manufacturer, in Brandon, estimated that the Forrest connection would increase his business at least 20 per cent by enabling him to ship to Grand Trunk Pacific points. This he contended to mean an increased revenue of \$10,000 a year for the railway. A wholesale harness and trunk manufacturer stated, that last

winter they had manufactured some 600 robes for farmers from horse and cow hides, but that they had got no business from the Grand Trunk Pacific territory because there was no satisfactory way of reaching it.

The applicants are agreeable that the local rates to and from point of interchange should be paid on traffic moving via Forrest so that the establishment of this interchange would not, at the present time, require the establishment of joint rates. A man is in charge of the interlocking plant at the crossing at Forrest and unless the volume of traffic at the interchange increased considerably beyond what is now estimated, this man ought to be able to look after the traffic at the point of interchange.

Bearing in mind the efforts that have been made by Brandon in the past to have a direct service on the Grand Trunk Pacific, and the action of the railway company in commencing the construction of its branch line to Brandon, which shows that at one time it was the intention of the company to utilize the powers given it by Parliament to build a line to Brandon, and also bearing in mind the revenue which the Grand Trunk Pacific would receive on traffic to and from Brandon, I think that company should be ordered to put in the interchange at Forrest at its own expense. It does not appear to me that the Canadian Pacific Railway Company will profit by this interchange. What it will gain on the ten-mile haul between Brandon and Forrest will hardly make up for the revenue it will lose on Brandon traffic which will be diverted from its line to the Grand Trunk Pacific.

I think the Grand Trunk Pacific should be ordered to forthwith file plans of proposed interchange and that the tracks should be installed within sixty days from the approval of the plans by the Board.

OTTAWA, July 9, 1918.

Mr. Commissioner Boyce concurred.

Conditions to be fixed in agreement respecting structure of C.N.R. over C.P.R. at Moosejaw.

File 20067.

Heard at Winnipeg, Man., June 15, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

By Order No. 27198 of May 10, 1918, the Board approved of plans of falsework for the erection of a truss span over the tracks of the Canadian Pacific railway at Moosejaw, by the Canadian Northern Railway Company. The order was made subject to and upon conditions to be fixed after hearing by the Board in Winnipeg.

The Canadian Pacific Railway Company have approved of the plans of the falsework, subject to an agreement to be made between the two companies with respect to liability for damage, if any.

In order to save expense, the falsework is not up to the standard clearances of the Board. The lowest overhead clearance is 21 feet 3 inches, and the narrowest lateral clearance is 6 feet 5 inches from the centre line of track. There is not much danger of accident to a man on the top of a freight car passing under a clearance of 21 feet 3 inches, but as the lateral clearance is several feet less than the Board's standard to which the trainmen are accustomed, there is danger of an accident to a man on the side ladder.

The Board is asked by both companies to determine the condition respecting responsibility to be put in the agreement. The Canadian Pacific Railway Company asks that the Canadian Northern Railway Company agree to indemnify it from all

loss, damage, or expense, of any nature that might be occasioned to the Canadian Pacific Railway Company owing to the construction of the falsework, or any work appertaining thereto, and it wishes this indemnity to include loss, damage, or expense, that has been occasioned or contributed to by the negligence of its servants or agents (C.P.R.) or otherwise howsoever. The Canadian Northern Railway Company think it should not be responsible for damage due to the negligence of Canadian Pacific Railway Company's employees. The falsework is put there entirely for the benefit of the Canadian Northern. It will doubtless be a saving of expense to that company to be relieved of the obligation to provide standard clearances. I cannot see that under these conditions the Canadian Pacific Railway Company should be responsible for injury caused by the existence of this falsework, even though some Canadian Pacific Railway employees has been negligent. In my view the position taken by the Canadian Pacific Railway Company is a reasonable one and it should be maintained.

OTTAWA, July 10, 1918.

Mr. Commissioner Boyce concurred.

GENERAL ORDER No. 240.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for an Order amending clause 20 of the General Order of the Board No. 94, dated July 24, 1912, prescribing "Uniform Rules governing the determination of visual acuity, colour perception, and hearing of railway employees on steam railways" so as to read "minimum instead of maximum standard specified."

File No. 1750.17

FRIDAY, the 21st day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, June 10, 1918, in the presence of counsel for the applicant company, the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen being represented at the hearing, and what was alleged,—

It is ordered: That the said General Order No. 94, dated July 24, 1912, be, and it is hereby, amended by striking out the words "maximum standard specified" in clause 20 of the rules thereunder approved and inserting in lieu thereof the words "the minimum standard of vision."

H. L. DRAYTON,
Chief Commissioner.

ORDER NO. 27328.

In the matter of the application of J. N. Muir on behalf of settlers in the vicinity of Bowser, B.C., for an Order directing the Esquimalt and Nanaimo Railway Company to erect a shelter and platform at that point.

File No. 28705.

FRIDAY, the 21st day of June, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Victoria, June 4, 1918, the Esquimalt and Nanaimo Railway Company being represented at the hearing, no one appearing for the applicants,—

It is ordered: That Esquimalt and Nanaimo Railway Company be, and it is hereby, directed to erect a shelter and platform at Bowser, B.C., plans showing the proposed structure to be filed forthwith for the approval of the Board, and the work to be completed by the 15th day of August, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER NO. 27329.

In the matter of the complaint of A. McKinnon of Cumberland, B.C., that the Wellington Colliery Railway Company refuses to note damages on freight bills when the charges are prepaid.

File No. 25407.4.

FRIDAY, the 21st day of June, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Victoria, June 4, 1918, in the presence of counsel for the Esquimalt and Nanaimo Railway Company, no one appearing for the complainant,—

It is ordered: That the complaint be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27360.

In the matter of the application of the residents of the village of Woodslee and vicinity, in the Province of Ontario, for an Order directing the Michigan Central Railroad Company to make Woodslee a flag or stopping point for its train No 14, leaving Windsor at 12 a.m.

File No. 28317.4.

FRIDAY, the 21st day of June, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Michigan Central Railroad Company be, and it is hereby, required forthwith to stop its No. 14 train on flag at Woodslee to let off passengers from Windsor and points west.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27361.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Canadian Northern Railway Company (The Halifax and South Western Railway Company), hereinafter called the "applicant company," for authority to remove its regular agent at Barrington Station, in the province of Nova Scotia.

File No. 4205-149.

FRIDAY, the 21st day of June, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby granted leave pending further order to remove the regular agent at Barrington station, in the province of Nova Scotia, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean and heated for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

H. L. DRAYTON.
Chief Commissioner.

ORDER No. 27362.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Canadian Northern Railway Company (The Halifax and Southwestern Railway Company), hereinafter called the "applicant company," for authority to remove its regular agent at Woods Harbour Station, in the province of Nova Scotia.

File No. 4205-150.

FRIDAY, the 21st day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby, granted leave pending further order to remove the regular agent at Woods Harbour station, in the province of Nova Scotia, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean and heated for the accommodatoin of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

H. L. DRAYTON.

Chief Commissioner.

ORDER NO. 27330.

In the matter of the complaint of taxicab drivers in Winnipeg against the treatment received from the Railway Companies at the Union Depot Winnipeg, Man.

File No. 28730.

SATURDAY, the 22nd day of June, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Winnipeg, June 17, 1918, the complainants and the Winnipeg Joint Terminals being represented at the hearing, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

D'ARCY SCOTT,

Assistant Chief Commissioner.

ORDER NO. 27332.

In the matter of the complaint of the MacCosham Storage and Distributing Company of Edmonton, Alta., that the Grand Trunk Pacific Railway Company refuse to bill forward the complainant's cartage charges in the same manner as is done for the charges of the Western Cartage Company.

File No. 18663.61.

MONDAY, the 24th day of June, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Edmonton, June 11, 1918, in the presence of counsel for the complainant, the Edmonton Board of Trade, and the Canadian Pacific, the Canadian Northern, and the Grand Trunk Pacific Railway Companies, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER NO. 27337.

In the matter of the complaint of the residents of Hodgson, Man., and the vicinity against the inefficient passenger train service on the Hodgson branch of the Canadian Northern Railway Company, and applying for an Order directing the said railway company to appoint a station agent at Hodgson.

File No. 28515.

MONDAY, the 24th day of June, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Winnipeg, June 15, 1918, in the presence of counsel for the railway company, no one appearing for the complainants; and upon reading the report of an Inspector of the Board,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to appoint a grain agent at Hodgson, Man., commencing September 1, 1918, such agent to remain on duty during the grain shipping season.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER NO. 27340.

In the matter of the complaint of the Harbour Commissioners of Vancouver, B.C., that the Canadian Pacific Railway Company will not allow foreign cars for Vancouver with export freight to be taken over the line leased by the British Columbia Electric Railway Company to the wharves in Vancouver Harbour.

File No. 28472.

MONDAY, the 24th day of June, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Vancouver, June 6, 1918, the complainants and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27344.

In the matter of the application of merchants of the Town of Mecheche, Alberta, for an Order requiring the Canadian Northern Railway Company to appoint a station agent at that point:

File No. 4205.153.

TUESDAY, the 25th day of June, A.D. 1916.

D'ARCY SCOTT, *Asst. Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, June 10, 1918, in the presence of counsel for the railway company, no one appearing for the Applicants; and upon reading the report of an inspector of the Board,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to appoint a station agent at Mecheche, Alta., by the 1st day of September, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27373.

In the matter of the consideration of the question of station facilities to be provided by the Edmonton, Dunvegan, and British Columbia Railway Company at Donnelly, Alberta; and the Order of the Board No. 26367, dated July 24, 1917, requiring the said Railway Company to erect and maintain a station at Donnelly, at Mileage 270.4.

File No. 27262.

TUESDAY, the 25th day of June, A.D., 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Edmonton, June 11, 1918, in the presence of counsel for the Railway Company; and upon the report and recommendation of and Inspector of the Board.

It is ordered: That the Edmonton, Dunvegan, and British Columbia Railway Company be, and it is hereby, directed to put the entire station building at Donnelly, Alberta, to public use; partition the same to make the passenger waiting room 9 feet by 15 feet 8 inches and the freight shed 9 feet by 16 feet 4 inches; appoint a caretaker whose duties will be to keep the station waiting room clean, and, when necessary, heated and lighted for the arrival of passenger trains, to see that package freight and express matter are properly housed, keep the freight shed locked with a notice posted for the information of the residents advising where the caretaker can be found at a convenient point, and to make delivery of less than carload and express shipments between the hours of 8 a.m. and 6 p.m.; and extend the station platform at least 100 feet; the caretaker to be appointed and the work herein required to be completed not later than the first day of September, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

GENERAL ORDER No. 242.

In the matter of the application of the Dominion Bridge Company, Limited, of Montreal, Quebec, hereinafter called the "Applicant Company" for a ruling on the following question:

Should an idler car used to take care of an overhang from a car loaded with articles taking a commodity rate with a greater than classification minimum weight be charged two-thirds of the minimum weight of the commodity tariff or of the classification?

File No. 28483.

FRIDAY, the 28th day of June, A.D., 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, June 10, 1918, the Applicant Company, the Canadian Freight Association, and the Grand Trunk and Canadian Pacific Railway Companies being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Traffic Officer of the Board.

It is Ordered: That the authority be and it is hereby given for a change in Rule 1 (c) of the Canadian Freight Classification No. 16, so as to provide that the minimum weight for the first car in a series of platform cars (the longest car in the series to be considered the first car) carrying articles too long for one such car be that provided for in the appropriate tariff covering such articles, and two-thirds of the said minimum for each additional car over which the load extends.

And it is declared that the lawful charge for each additional car, used as herein described prior to the effective date of the amendment herein authorized, was and is two-thirds of the minimum weight provided for in the Canadian Freight Classification for the articles so carried, unless specifically excepted from the provisions of the said Classification in the tariff applicable.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 241.

In the matter of the westbound transcontinental freight rates, and the powers conferred upon the Board under Section 323 of the Railway Act.

File No. 28678.

SATURDAY, the 29th day of June, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas the westbound transcontinental freight rates on specific commodities from Eastern Canada to destinations in British Columbia, recognized as Pacific Coast terminals, have been in the past and are now lower than the regular scale of rates under the Canadian Freight Classification, and the said commodity rates were definitely related to the rates on the same or similar commodities shipped from the eastern states of the Union to Pacific Coast points, including those in British Columbia, until March 15, 1918, when the last-mentioned rates were increased without corresponding increases from Eastern Canada;

And whereas the Director General of the United States Railroad Administration has ordered the United States carriers to increase the rates which were in effect from the eastern states immediately before June 25, 1918, by 25 per cent, effective from that date, and because of the competitive character of the traffic it is expedient to continue at least the equilibrium existing before March 15, 1918,—

It is ordered: That the railway companies in Canada engaged in the said west-bound transcontinental traffic be, and they are hereby, permitted to increase the present so-called commodity rates from Eastern Canada so as to place them on at least an equality with the rates now in effect from the neighbouring states of the Union, and that the rates so increased be permitted to become effective not earlier than the first day of August, 1918, upon not less than five days' notice to the Board and to the shipping public by filing and posting in the manner prescribed in the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27382.

In the matter of the application of the Windsor, Essex, and Lake Shore Rapid Railway Company, hereinafter called the "applicant company," under Section 327 of the Railway Act, for approval of its Standard Mileage Freight Tariff, C.R.C. No. 236.

File No. C. 2327.

TUESDAY, the 4th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

The said Standard Freight Tariff having been filed on the basis permitted by the Board in its Order No. 27308, dated June 15, 1918,—

It is ordered: That the applicant company's Standard Mileage Freight Tariff C.R.C. No. 236, issued to become effective July 20, 1918, be, and the same is hereby, approved; the said tariff together with reference to this Order to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27399.

In the matter of the application of the Express Traffic Association of Canada, on behalf of all the express companies subject to the jurisdiction of the Board, for the approval of Supplements "B," "C," "D" and "E" to the Express Classification for Canada No. 3.

File Nos. 4397.35, 4397.36, 4397.37, 4397.38, 4397.39, 4397.391, 4397.43.

SATURDAY, the 6th day of July, 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Notice of the submissions having been given in *The Canada Gazette*, as required by the Railway Act and to the commercial organizations enumerated in the General Order of the Board No. 153 as applied, also, to the express companies by General Order No. 158, and the proposed changes having been accepted or, as amended, agreed to by the parties interested therein, and finally combined and submitted as Supplement "F,"—

It is ordered: That the said Supplement "F" to the Express Classification for Canada No. 3, be, and the same is hereby, approved, the said Supplement to be published and filed as Supplement No. 12 to the Express Classification for Canada No. 3.

H. L. DRAYTON,
Chief Commissioner.



The Board of

AUG 10 1918

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 9

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Application of the Security Traffic Bureau for revised rating on shipments made in 1912 said to consist of base boards and casings, although described by shipper in bill of lading as mouldings.

File 16453.13.

Heard at Winnipeg, Man., June 15, 1918.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

This is an application by which the Board is asked to rule as to the correctness of a claim made by the Security Traffic Bureau against the Canadian Pacific Railway Company, and refused by that company, and decide whether it should be allowed.

For the convenience of all parties concerned the case was set down for hearing at Winnipeg and the parties were notified. No one appeared for the complainant. The railway company was represented by counsel.

It appears that a shipment described in the bill of lading, which is dated as far back as April 27, 1912, from Radford-Wright Company as shippers to Galvin-Watson Company, at Wilkie, Sask., was made from Winnipeg and was billed by the shippers and charged by the Canadian Pacific Railway Company as sixty-two bundles of mouldings, weighing 3,970 pounds. The shipment was accepted as mouldings, and the rate on mouldings was charged and paid.

Four years later, on April 12, 1916, the Security Traffic Bureau of Minneapolis entered a claim against the Canadian Pacific Railway Company for reduction from first to third class on 2,850 pounds (involving a refund of \$11.97) of the total weight of 3,970 pounds, on the grounds that while the shipment was described as mouldings, it really consisted of casings, baseboards and window stools, to the extent of 2,850 pounds thereof. It is to be noted that the invoice submitted shows no weight, but the shippers' estimate as to the proportion of shipment which should take the third class rate is supposed to be taken. The railway company rejected the claim, and on the 28th March, 1918, complaint was made to this Board.

Mouldings move as first class under Canadian Freight Classification No. 15, page 48, item 63, and the shipment as described was properly subject to that rate. Casings and window stools are not shown in the classification but, under items 47 and 48, boards plain and moulded for wainscotting, etc., took the third class rate; and, under item 49, the same articles N.O.S. also took the same rate. The complainants contend that casings, baseboards and window stools are simply boards plain and moulded, and such of them as were in the shipment should be classified as third class—a contention which I am not disposed to grant, even if the facts are admitted.

The whole question resolved itself into one of interpretation of Canadian Freight Classification No. 15, in force at the time the shipment was made.

The answer to the claim, hoary with age, involving only \$11.97, is that the shippers themselves are primarily to blame, as the classification followed their own description as to the contents of the bundles shipped. They described them as mouldings, and as mouldings they were carried, and as mouldings they were delivered to and accepted by the consignees who paid the freight on them as mouldings, and allowed four years to elapse before setting up a claim at variance with their own acts and professions. It is true that the complainants are, strictly speaking, not precluded from being heard, but their laches are consistent with assent, grumbling it may be, and it is not unfair to exact the strictest proof in such a case in support of the claim. Only if the facts were undisputed would I incline to a consideration as to whether their contention as to the applicability, *pro tanto*, of the third class rate is meritorious. But the facts are disputed, and the onus being entirely on the complainants to make out a case to clearly establish the error of the original classification in bill of lading, I find they have not satisfied that onus.

Had the shipment been properly described I fancy there would have been no difficulty in applying the classification properly. The fact that the complainants are themselves responsible for the payment of the rate now (six years later) objected to, and for the description which originated that rate, is the obvious reason why the dispute comes before us. They ask to be relieved against their own blunder, and they come, guilty of laches, and not discharging the onus upon them.

If only because the toll has been voluntarily paid I think, following *Lees v. Ottawa and New York Ry. Co.*, 31 O.R., 567, that the complainants would have had difficulty, but that is one of the many factors presented which, in my opinion, on the case before us, disentitle them to the consideration and remedies they seek—if such are within the jurisdiction of this Board—as to which I need make no observations.

The complaint should be dismissed.

OTTAWA, July 10, 1918.

The Assistant Chief Commissioner concurred.

Application of the City of Winnipeg, Man., for an Order to extend the delivery limits of the Express Companies in the City of Winnipeg.

File 4214.145.

Heard at Winnipeg, June 15, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER.

The city of Winnipeg applies for the extension of the express delivery limits in the southwest part of Winnipeg, from its present boundary, Daly street, westerly to the centre line of the Canadian Northern Railway.

After the hearing at Winnipeg, the Commission had an opportunity of going over the ground and making an inspection of the territory which the city asks to have included in the express delivery limits. There are no paved streets in the territory in question. It can be reached either from Pembina highway or Orborne street, both of which are paved. It is entirely a residential section, the western portion of which contains a good deal of vacant land. The territory between Cockburn and Daly streets is the most populous of the section, and I think it might be included in the free delivery limits. Cockburn street is the western limit of the free delivery area north of the Canadian Northern Railway yards. Therefore, if Cockburn is taken as the western boundary south of the Canadian Northern Railway yards, we will just be continuing the line north of the railway property southerly.

I think an Order should go extending the delivery limits to include the territory bounded on the north by Kylesmore avenue, on the west by Cockburn street, on the south by the south line of lot No. 17, St. Boniface, and on the east by Daly street.

OTTAWA, July 10, 1918.

Mr. Commissioner Boyce concurred.

In the matter of the cost of the construction of the Canadian Pacific Railway spur to the Bienfait Commercial Company's property, and the cost of the maintenance of the spur.

File 26738.

Heard at Winnipeg, Man., June 15, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

By Order No. 25350, dated 8th September, 1916, the Canadian Pacific Railway Company is ordered to construct, maintain, and operate a spur for the Bienfait Commercial Company, which company was to deposit \$5,800 in a chartered bank in Estevan to wait further order of the Board, that being the sum estimated as being necessary to defray all expenses of constructing and completing the spur. Clause 3 of the order provided:—

“That if any dispute arise as to the construction or operation of the said spur, or as to the expense thereof, the same be referred to the Board.”

The \$5,800 was deposited in the bank on the 20th July, 1917, and by the end of September, 1917, the railway company had completed the construction of the spur.

By order of this Board, No. 26049, of the 29th January, 1918, the bank in Estevan was authorized to repay to the Bienfait Commercial Company the sum of \$629 to cover the cost of the grading of the right of way which had been done by that company.

A dispute has arisen between the railway company and the Bienfait company as to the railway company's account for the work on the spur line done by it. The difference is largely due to the difference between the railway company's prices for 1917 and 1918. The company have billed the work on its 1918 prices although the work was completed in September, 1917.

The railway company's explanation is, that in the fall of each year—about October or November—the head office of the company in Montreal supplies its outside offices with the prices for the following year for the purpose of making up estimates for work to be done in that year. The Canadian Pacific Railway engineer at Winnipeg, who had supervision of this matter, said that by the fall of 1917, when the work was completed, the material could not be supplied for the 1917 prices, and he therefore made his bill on the 1918 prices.

The matter was referred to the Board's engineer at Winnipeg, and he, after going carefully into the matter, recommends that the 1917 prices be made applicable. In view of the fact that the money was deposited in July, 1917, and the work completed in the autumn of that year, I agree with our engineer that the 1917 prices should prevail. I, therefore, think the Board should adopt Mr. Drury's report, in which he places the grand total of the company's bill at \$3,445.31, which is \$1,376.89 less than the company's bill as made up by its engineer.

The other point to be disposed of is the question of the maintenance of the spur. I see no reason why the usual practice which applies in connection with private spur lines should not apply in this case, and that is, that while the spur should be main-

tained by the railway company, which is best qualified to do work of this nature, it should be done at the expense of the Bienfait company. The railway company did not want to build this spur, but were ordered to do so, in the interests of commerce, by this Board. The entire cost of construction was put upon the industry desiring the spur, and it is only natural that the cost of maintaining the spur should be borne by the industry to be served by it.

OTTAWA, July 10, 1918.

Mr. Commissioner Boyce concurred.

Application of the Montreal and Southern Counties Railway Company for permission to file tariffs providing for a general advance in the tolls for the carriage of passengers and freight over its line in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439.3.

JUDGMENT.

The CHIEF COMMISSIONER:

This application for increased rates is based on the necessities of the company and the result of the general advance in costs of transportation.

The application was opposed by several of the municipalities interested. Issues raised by such municipalities not only challenge the claim of the company that increases are necessary, but challenge the right of the company to obtain any increases whatever, no matter what present conditions may be, owing to the fact that the railway company has entered into agreements with the said municipalities limiting the rates or fares which the company may collect.

The application came on for hearing at the sittings of the Board held in Montreal on June 10, 1918. The case of the municipalities not being complete, the matter was allowed to stand for the filing of written submissions, which have since been received, and the case is now ripe for judgment.

Owing to the issues which were raised on the question of changed conditions and increased costs, and to the fact that the company certainly did enter into agreements with some of the municipalities interested, it becomes necessary to go carefully into the company's accounts.

The railway is operated by electricity; its operating mileage is 52.2 miles, of which 26.99 miles consist of mileage owned by the company, while the remainder consists of track leased from the Central Vermont Railway Company. The company runs on a regular schedule trains from Montreal to Granby, passing through (among others) the municipalities of St. Lambert, Montreal South, St. Hubert, Longueuil, and Greenfield, which municipalities oppose any increase.

The company has a share capital of one million dollars. No dividend has ever been paid on this, nor is there the slightest hope that a dividend will be paid on it if increases as requested are granted. I have not ascertained whether or not this capital stock represents money actually put in the property or to what extent, as for the purpose of this case it is unnecessary to consider the capital. The company has no bond issue, but its financing has been done by cash advances made to it by the Grand Trunk Railway Company. The totals of such advances are:—

Secured by the Electric Company's notes	\$949,627.00
Unsecured	511,917.60
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	\$1,461,544.60

Omitting share capital, the foregoing figures may be compared with the sum of \$1,754,507, which, in the *London and Port Stanley Case*, was held not unreasonable for a basis on which to compute returns in respect of the 29 miles of railway there involved.

The following detail covers by half years, for the calendar years 1915-1917 inclusive, gross revenue; operating expenses, including rentals; taxes; interest on unfunded debt:—

	January-June, 1915.	July-December, 1915.
Gross revenue	\$101,495.94	\$109,480.70
Operating expenses, including rentals . .	104,648.65	99,549.56
Taxes	1,377.60	1,442.64
Interest on unfunded debt	20,802.04	23,740.68
	January-June, 1916.	July-December, 1916.
Gross revenue	\$108,149.36	\$135,742.46
Operating expenses, including rental. . .	115,885.25	122,171.24
Taxes	1,544.74	1,675.00
Interest on unfunded debt	23,740.68	33,754.28
	January-June, 1917.	July-December, 1917.
Gross revenue	\$128,793.04	\$158,688.50
Operating expenses, including rentals . .	152,064.88	148,406.31
Taxes	1,800.00	1,800.00
Interest on unfunded debt	34,369.76	36,059.58

Characteristic details extracted from the foregoing tables may be set out in condensed form:—

1915—Gross earnings from operation	\$210,976.64
Operating expenses, including rentals	204,198.21
Net earnings from operation	\$ 6,778.43
Taxes	2,820.24
	<hr/>
	\$ 3,958.19

The operating ratio for the year in question is 96.7 per cent.

1916—Gross earnings from operations	\$243,891.82
Operating expenses, including rentals	238,056.49
Net earnings from operation	\$ 5,835.33
Taxes	3,219.74
	<hr/>
	\$ 2,615.59

The operating ratio for the year in question is 97.6 per cent.

1917—Gross earnings from operation	\$287,481.54
Operating expenses, including rentals	300,571.29
Deficit	\$ 13,089.75
Taxes	3,600.00
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Deficit, including taxes	\$ 16,689.75

The operating ratio for this year is 104.05 per cent.

The net earnings from operation, less taxes, are derived from the 52 miles operated. Even if the net earnings, less taxes, are allocated on the basis of the 26 miles owned, the results are, for:—

1915, \$146.65 per mile.
1916, 96.90 “
1917, there is, as indicated, a deficit.

The interest charges shown for 1917 amount to \$70,429.34. There appears to be no reason why the investment in the property cannot be taken at the amount advanced by the Grand Trunk, namely, \$1,461,544.60, but the company's position is such that no proper return has been made, even on the \$949,627 secured by the railway company's notes.

Merely considering the company's position from this standpoint, interest at but 5 per cent on this sum would equal \$47,481. Even on this basis the company's operations are unproductive, as the following results for the half-years already given, when treated on this basis, show:—

	Operating deficit or surplus, including taxes.	Deficit as in Col. 1, plus one-half capital charges.
1915.		
January-June	\$ 4,530.31 (def.)	\$28,270
July-December	8,388.50 (sur.)	15,352
1916.		
January-June	\$ 9,280.63 (def.)	\$33,020
July-December	11,956.22 (sur.)	11,784
1917.		
January-June	\$25,071.84 (def.)	\$48,811
July-December	8,482.19 (sur.)	15,258

It will be noted that in every half-year in the period concerned the net earnings from operation, less taxes, fell short of paying interest at 5 per cent on the secured notes only.

The miscellaneous earnings, other than those properly allocable as car earnings, do not, as indicated in the returns, exceed 3 per cent in any one year. The distribution of car earnings shows the following percentage results:—

	1915. Per cent.	1916. Per cent.	1917. Per cent.
Passenger	94	93	87
Freight	0.7	0.2	4
Mail	5.3	7.8	9
Express			
Milk			

Included in the operating expenses, as set out, is the item for rentals. For the calendar years 1915-1917 the respective figures are \$61,948.14, \$60,086.69 and \$62,654.47. More strictly, these items correspond to a capital charge, because they are payments for the use of facilities which otherwise would have to be obtained by a capital investment.

The rentals for the fiscal year ending June, 1917, are as follows:—

Victoria bridge	\$39,033.20
Central Vermont tracks	22,027.45
Harbour Commissioners' tracks	80.50
Total	\$61,141.15

The item of rental for Harbour Commissioners' tracks does not need any comment.

The railway operates into Montreal over the Victoria bridge and pays therefor a rental of \$12,000 per annum, and in addition a charge of 40 cents per car using the bridge. In the fiscal year in question 67,584 cars of the Montreal and Southern Counties Railway Company used the bridge.

The bridge is undoubtedly a very expensive structure, and the duty is thrown on the Grand Trunk of maintaining that part of the bridge used by the electric railway company. If the earnings of the company at all approximated a satisfactory return it might be necessary more closely to scrutinize this charge. On its face, however, it does not appear unreasonable, and a detailed investigation, in view of the figures of actual operation, is unnecessary.

The rental paid the Central Vermont Railway Company for running rights over 25.3 miles is equivalent to 5 per cent on \$440,540, which would represent a capital cost of \$17,412 per mile of railway. This is a reasonable charge.

The railway has been subject, during the period in question, to increases in cost of material, comparable to those which have been found to exist in the case of the electric railway companies whose applications for rate increases have been dealt with by the Board.

In the period 1915-1917 increases of from 100 per cent to 300 per cent are shown on particular items, with a general average of 77.5 per cent.

On the basis of calendar years labour costs were \$51,394 greater in 1917 than in 1915.

The Board has been advised since the hearing that the railway company has, on account of the increase in wages given by the Montreal Tramways Company to its employees, been compelled to give an increase to its employees of 20 per cent. This became effective June 16.

Taking the car-mile as the unit of measurement of earnings and expenses, the following comparisons are available:—

	1915.	1916.	1917.
Gross earnings per car-mile	*355	*359	*344
Operating expenses and taxes per car-mile . .	*350	*361	*361
Surplus or deficit per car mile	(+)*005	(—)*002	(—)*017

It will be noted that these comparisons do not in any way make any provision for interest. As a result, on the business of 1917, the company has not only made no return on the investment, but is actually out of pocket.

In the period 1915-1917, gross earnings from operation have increased 36 per cent. In the same period operating expenses have increased 47 per cent.

Gross income, less operating expenses, has fallen from a plus of \$6,788.43 to a minus of \$12,989.67, and when deduction is made of taxes the comparative figures are a plus of \$3,856.09 and a minus of \$16,598.67.

The matter of operating costs and net returns, the computations being exclusive of any provision for interest, show, when reduced to a basis of \$1 for purposes of comparison, the following results:—

In 1915 it cost 96·7 cents to earn \$1 of revenue.
 " 1916 " 97·6 " " " "
 " 1917 " 104·5 " " " "

When taxes are included the following results are available.

In 1915 it cost 98·1 cents to earn \$1 of revenue.
 " 1916 " 98·9 " " " "
 " 1917 " 105·8 " " " "

Under the Act, the Board is given jurisdiction to regulate tariffs subject only to appeal to the Governor in Council. Its direct duty is to disallow any tariffs, either in whole or in part, which it considers to be either unjust or unreasonable. The scheme of the Railway Act is, in short, that the measure of rates charged by companies shall be just and reasonable to the shippers and the public on the one hand and to the company on the other.

Again, rates must not only be just and reasonable as between the public and the carrier, but they must also be free from discrimination not only as between individual shippers, but also as between localities.

The present rates are clearly unremunerative.

I now deal with the question of municipal agreements. Mr. David, K.C., appeared for the municipalities of St. Lambert and Montreal South. Mr. Chisholm, K.C., who appeared for the railway company, stated that the application to increase rates did not conflict with his company's agreement with the Montreal and Southern Counties Railway Company; but there is no doubt whatever that the issue is direct in so far as the agreement with the town of St. Lambert is concerned. Agreements are also relied on by the municipalities of Greenfield Park and Longueuil.

The agreement made with the town of St. Lambert, as contained in by-law No. 44, was duly adopted by the electors. Section 6 provides for the rate of fares. It reads as follows:—

"That the rate of fare to be charged and collected by the said company for commutation tickets, or for single and round trip tickets, between any point on their line in St. Lambert and their terminus in the city of Montreal, and *vice versa*, shall not exceed the rate or fare charged by steam railways for similar tickets between the said places at the date of the passing of the present by-law by the city council."

If increased tariffs as applied for are allowed these tariffs will not be higher than the existing rates on the steam roads, but will be higher than the steam railroad rates in force at the time the by-law was passed. Mr. David's submissions, which is joined in by other interested municipalities, is that the Board has no jurisdiction to change the rates fixed by the agreement. His final submission on the point is:—

"I submit that although the Board may have a general jurisdiction over all railways, electric or steam, throughout Canada, whenever there is a private agreement between a municipality, in which one of the conditions is that the rate shall never exceed a certain amount, that contract should be accepted."

Mr. David, upon being asked how many other municipalities the line served, stated that it ran all along the south shore of Granby, passing through St. Lambert, Greenfield Park, Montreal South, Longueuil, Chambly, Richelieu—a very large number all together—and that the company's mileage in St. Lambert was only 1.4 miles.

The Montreal and Southern Counties Railway Company was incorporated by an Act of the Dominion Parliament declaring its undertaking to be a work for the general advantage of Canada. The company's mileage in all the municipalities having agreements limiting rates constitutes but a comparatively small part of the whole.

Beyond all question the company requires more revenues. There is no room for debate, in so far as municipalities are concerned which are without agreement. Under the circumstances the company is entitled to increase tolls beyond all question in so far as such municipalities are concerned, but to increase the company's tolls in such municipalities without at the same time increasing the rates in St. Lambert and the other municipalities which have agreements with the railway, would be to produce a different scale of tolls between such municipalities and the municipalities with agreements.

The Railway Act, further, does not contemplate rates being fixed by agreement. The Board's jurisdiction over rates is not shared by one conferred upon municipalities. On the other hand, agreements between individual shippers and railways and separate municipalities or localities must inevitably tend to defeat the object of the Act, which is to secure as far as possible a just and reasonable basis of charge free from discrimination.

In the present case the agreements go further than to provide for merely a local rate within the bounds of the municipality, and call for rates either into or out of the interested municipalities. The railway company can only recover such tolls as its tariffs filed with the Board justify. Under the Act it is for the Board and not for the municipality to determine whether or not the tariffs filed are unjust or unreasonable. The question as to whether tolls are or are not unjust or unreasonable cannot conclusively be determined by municipal agreement, even though fixed by a municipality as a condition of the franchise and so accepted by the carrier. Agreements between the municipalities and the railway company do not oust the jurisdiction of the Dominion Parliament and the Railway Board in their administration of the Railway Act.

It may be noted that the agreements in question have not been validated by legislation and have not been submitted to or approved by the Board.

A somewhat similar issue was considered in the *Increased Passenger and Freight Tolls Case*, reported in 22 *Can. Ry. Cas.*, p. 49; reference is made to the judgment in that case and to the decision of the Board in *Lyons Fuel and Supply Co. v. Algoma Central Railway Co.* (File No. 25181.)

Similar action has been taken by rate-regulating commissions in the United States. Indeed, such action is the only logical result of either provincial or Dominion rate regulating laws. Rates cannot well be regulated by two conflicting jurisdictions.

Reference is made to *St. Louis and Illinois Central Passenger Fares Case*, 41 *I.C.C. Rep.* at p. 584; *Milwaukee Electric Ry. and Light Co. v. Railroad Commission of Wisconsin* (P.U.R. 1915 D.), p. 559; and *City of Manitowac v. Manitowac Northern Traction Co.*, 145 *Wis. 13*.

I find that the cost of the transportation service afforded by the company has greatly increased and that the increased rates the company desires to make effective are just and reasonable.

In my opinion an Order ought to issue as prayed notwithstanding any municipal agreement to the contrary.

OTTAWA, July 10, 1918.

The Deputy Chief Commissioner and Commissioner Goodeve concurred.

Complaint of David Spencer, Limited, of Vancouver, B.C., against the interpretation placed by the railway companies on the ratings of the Canadian Freight Classification as applied to shipments of women's hats from Eastern Canada.

File 19367.76.

Heard at Vancouver, B.C., June 6, 1918.

JUDGMENT.

MR. COMMISSIONER BOYCE:

The Canadian Freight Association Westbound Transcontinental Tariff No. 1, of the Canadian Freight Association, effective September 20, 1916, provided, by item 240, a commodity rate from Eastern Canada to the British Columbia Coast terminals on certain enumerated articles of clothing, including "hats and caps (other than millinery) taking first-class rating in the Current Freight Classification."

In March, 1917, the Cooper Cap Company, Toronto, shipped seven cases of cotton hats, with band or binding only, to Vancouver, B.C., on which the rate—D.1 (\$7.24) was charged, the carriers applying the rate on millinery. By error, the shippers described the shipment as millinery, but subsequently filed a claim for refund, claiming that the shipment took the commodity rate above referred to.

The Canadian Freight Association, to whom was submitted a sample of the shipment, was of the opinion that a shipment of such a nature should take the D.1 rate on millinery. The shippers contended that the shipment consisted of "hats other than straw." Classification No. 16, item 28, of the then tariff.

The shippers appealed, and David Spencer, Limited (presumably the consignee), at any rate in similar case, also appealed to the Board against what they complained was an improper interpretation of the classification.

The broad question is, whether the special commodity-rate of the Westbound Transcontinental Tariff should, or should not, apply to ladies' hats with plain band and binding only. The amount of the rates themselves have changed since complaints were made and are still changing, so reference to them is not important to the decision of the question submitted. The decision turns upon the question as to whether a hat of any material, bound at the edge and with a plain band only, is entitled to a first-class rating—that is, whether such a hat is a trimmed hat—or, is millinery.

The classification referred to, in the rating of the articles to which it has been applied has evidently been found so indefinite that the Canadian Freight Association, by Supplement No. 11, now before the Board for approval, proposes to change it by providing the following classification:—

Straw caps, hats and bonnets, not trimmed—1st class.

Hats and bonnets, trimmed, double—1st class.

Hats and caps, other than show goods—1st class.

Men's straw hats, as a rule, have a band, and, come under the first quoted item. No one would suggest that on account of the band they could, or should, be rated as

"trimmed" so as to bring them under the second item quoted—yet they are often of a more expensive type than some of those in question, for example the cotton hats.

It would be a great stretch of the ordinary term as we understand it, to say that a woman's hat with a mere band or binding is a "trimmed" hat, so as to bring it under the second term above and cause it to take the double first rate. To mankind generally, especially to married mankind, there is no misunderstanding or confusion as to when a ladies' hat is "trimmed" or not. Ribbons, flowers, feathers, birds, fur, fruits and a variety of wonderful and ingenious imitations of nature's productions have constituted "trimming" of a woman's head-dress since primeval times— and he would be a bold man indeed who would suggest or contend (to a woman) that e.g., her Easter bonnet was "trimmed" if it was adorned with a simple band. The peace of the home might suffer acutely—and not without justification.

The American Transcontinental Tariff, approved by the Interstate Commerce Commission, contains the important variation from the Canadian Continental Tariff in that "bonnets or hats with band or binding only will be taken at the rating established on bonnets or hats not trimmed." The rating in that tariff for untrimmed bonnets or hats in wooden boxes is first class. The proposed supplement (No. 11) of the Canadian Classification generally, follows the Western classification—and, when approved and published, will make this question quite clear.

I am of opinion, as regards the past shipments in question, that the reasonable and fair interpretation of the classification at the time those shipments were made, entitles the complainants to the commodity rate in force at the time the shipments were made—and would order accordingly.

OTTAWA, July 11, 1918.

The Assisant Chief Commissioner concurred.

Complaint of Messrs. Plunkett & Savage, of Calgary, Alta., against a heater charge of \$22.50 per car from Minneapolis to Calgary, via C.P.R., on five carloads of bananas ex New Orleans.

File No. 18855.18.

Heard at Calgary, June 10, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

Supplement No. 2 to Minneapolis, St. Paul and Sault Ste. Marie Railway Tariff C.R.C. No. 645, effective February 1, 1917, contains the following provision:—

"Charge for Heated Refrigerator Cars.

"Upon receipt of reasonable notice from shippers that a heated refrigerator car is required for carload shipments between Minneapolis, St. Paul, Minnesota Transfer, Duluth, Minn., or Superior, Wis., and points taking same rates or arbitraries higher and stations in Canada named in tariff as amended, the following rates will be assessed for heating in addition to the regular freight charges of the cars."

The rate from Minneapolis to Calgary being \$22.50.

The complainants are wholesale fruit merchants in Alberta. In the two months following the effective date of the above tariff the complainants received five carloads of bananas from New Orleans. In each case the car in which the bananas were shipped was a refrigerator car and had a heater in it when it reached Minneapolis. Each car was in charge of a servant of the consignee, whose duty it was to regulate

the temperature in the car so that the ripening process of the bananas would not be checked by a low temperature. When the cars reached Minneapolis the messenger fearing that the fruit might suffer by the colder climate north of Minneapolis, asked for and obtained extra heaters for these cars. The messengers accompanied the cars to their destination at Calgary and regulated the temperature in them.

Upon the arrival of the cars at Calgary the consignees were billed \$22.50 in each case for heated refrigerator cars from Minneapolis to Calgary. The only provision under which the company could claim justification for the charge was the tariff above quoted. There is no tariff charge providing for heaters; the charge being for the heated refrigerator cars. The complainants objected to the charge, but paid the \$22.50 in each case under protest.

As, has already been pointed out, the bananas were being shipped in refrigerator cars supplied with heaters in charge of a servant of the consignee. If he had not asked for the additional heaters at Minneapolis there would have been no extra charge. The freight rate from New Orleans to Calgary included the refrigerator car with the heater in it and the transportation of a messenger from the point of shipment to destination.

I am of the opinion that the service rendered by the railway company in supplying the additional heaters is not covered by the tariff mentioned, and as there is no tariff provision for the supplying of additional heaters the railway company was wrong in making the charge of \$22.50 on each car.

In my opinion an order should go declaring the charge to be wrongfully made and permitting the company to refund the money.

OTTAWA, July 11, 1918.

Mr. COMMISSIONER BOYCE:

If the car in question has not been, within the tariff item, a heated "refrigerator car" from New Orleans to Minnesota transfer, my view is that the tariff would have applied. But the original service was that of a heated refrigerator car—and the service asked for and obtained on its arrival at Minneapolis, was for an additional heater, or more adequate heating, and not "a heated refrigerator car" from there to Calgary. It is true, as pointed out by Mr. Lanigan at the hearing, that bananas require a special treatment and an experienced and watchful messenger accompanying them, to see that the ripening process is not checked by chill which would not impair detrimentally the condition of other fruits, but it is also true that all that was asked and supplied at Minneapolis, was additional heat, not a heated car. The shipment came all the way in the same car from New Orleans.

There was extra service given by the railway, but not of a character covered by the item. Under the special circumstances it is perhaps unfortunate that there is no tariff item which could be invoked to reimburse the railway company for what outlay was involved in supplying the extra heat specially required in the case of a banana shipment, above that supplied in a standard heated refrigerator car. If C.R.C., W. 2250, which provides for an extra charge of 1 cent per car per mile for such a special service as that furnished for this banana shipment were applicable to that territory, and to such a condition of things as is disclosed, perhaps it might be invoked by the railway to meet such a case as this.

I agree with the conclusion of the Assistant Chief Commissioner, but it can, in my opinion, be applicable to none other than the particular circumstances involved in this case, and must not be invoked as a precedent to govern other cases which must, on the present tariffs, be decided on the basis of particular facts applicable to each movement. Perhaps the railways can file a tariff to meet such conditions in the future.

OTTAWA, July 16, 1918.

Application of the Hamilton Radial Electric Railway Company for an Order permitting it to file tariffs providing for a general advance in the tolls for the carriage of passengers over its line to a maximum of 2.875 cents per mile; and for an advance in the tolls for the carriage of freight in the same manner and to the same extent, that is 15 per cent, as has been permitted by the Board in the case of steam railways.

File No. 28439.6.

JUDGMENT.

The CHIEF COMMISSIONER:

This application for increased rates is justified by the company on the usual grounds. It is opposed by the city of Hamilton, the Burlington Beach Commission, the towns of Burlington and Oakville, and the township of Nelson. The application came on for hearing on Monday, June 24, 1918, judgment was reserved, leave being given for the filing of further submissions by the municipalities and further material by the company.

The application is contested on two grounds: First, that the increases are unnecessary in that the company is now making sufficient revenues; and, secondly, that the question is covered by municipal agreement.

I deal, in the first instance, with the application for increases on its merits. The city alleges as follows:—

“(a) That the receipts of the company are large and the net revenue of the company is sufficient to pay more than reasonable dividends upon the capital invested by the company.

“(b) The mileage of the railway is small as compared with trunk line railways.

“(c) That owing to such small mileage the number of cars required is small; and the increase in cost of car repairs would not be material.

“(d) The company is controlled by the Dominion Power and Transmission Company, Limited, which latter company charges the Radial Company a large amount for power, station privileges, administration, etc.

“(e) That the present passenger rates on the Burlington and Oakville line are too large; probably larger than any rates charged by any other similar electric line in Canada.

“(f) A large portion of the right of way of the railway is upon public highways from which great numbers of passengers are obtained, and for such privileges the municipalities are entitled to consideration. The cost of maintenance of the stations of the company is small.”

No question has been raised by any interested municipality with reference to freight rates, but the contest was confined entirely to the question of passenger fares. It may be noted that in any event the company's freight earnings are not a matter of great moment, as the statutory return for the year ending June 30, 1917, shows freight earnings of only \$12,368.72.

The company's capital charges and indebtedness amount in all to \$1,097,633.90, made up as follows:—

Capital stock	\$111,150 00
Funded debt	160,000 00
Floating debt	826,483 90

It has a line of twenty-five miles and has also 8.69 miles of second track. The company is not one which can well be compared with the trunk line railways, as pointed out by the city. It can be much more reasonably compared with the London and Port Stanley Railway Company, that company having a mileage of some 29 miles. The Board has only recently considered the application of the London and Port Stanley for an increase of rates and has found that increase to be justified.

Comparisons may be much more fairly instituted between these two radials than between any radial and a steam railway. Here again comparisons cannot be exactly

made. The business of the London and Port Stanley is much more remunerative than that of the Hamilton Radial, and no reasonable rate increase of the Hamilton Radial tariffs could put the net earnings of the systems on a parity. While the Hamilton Radial earns on its freight traffic, as already noted, but \$12,368.72, the London and Port Stanley earns \$147,826.72.

The passenger traffic returns, however, may be compared. The standard passenger rate of the London and Port Stanley before its rates were increased was $2\frac{1}{2}$ cents per mile, subject of course to the usual minimum of 5 cents. The standard rate of the London and Port Stanley as increased is 2.875 cents per mile.

The standard passenger tariff of the Hamilton Radial is 2 cents per mile. The standard passenger rate of the London and Port Stanley Railway is therefore 43.75 per cent higher than that of the Hamilton Radial.

Much traffic, of course, does not move on the standard rate, but moves under special tariffs. The statistics for the year (1917) show that the Hamilton Radial carried 1,322,615 passengers, with a resulting gross earning of \$148,175.56, which gives an average rate per passenger carried of 11.20 cents. In the same year the London and Port Stanley carried 726,799 passengers, with a resultant income of \$147,470.44, at an average rate per passenger of 20.29 cents. The Hamilton Radial, therefore, had a passenger traffic amounting in load to 82 per cent more than the London and Port Stanley, but its remuneration per passenger was 48 per cent less than that received by the London and Port Stanley.

The excess of passenger density on the Hamilton Radial is not as great as the excess figures would show, as reducing the number of passengers to the passenger car mileage basis, the statistics show that the passenger car miles of the Radial amounted to 489,658, with passengers, as already noted, of 1,322,615, resulting in an average of 2.72 passengers per car mile. The London and Port Stanley has a passenger car mileage of 440,315 carrying 726,799 passengers, making an average of 1.65 passengers per car mile. The car-mile traffic density on the London and Port Stanley is, therefore, but 39.4 per cent less than that of the Hamilton Radial, indicating that the London and Port Stanley has the benefit of a longer haul approximating 50 per cent and which of necessity apart from rate differences would increase the passenger returns.

The returns from operation of the Hamilton Radial, after deducting taxes, amount to \$24,015.89. Those of the London and Port Stanley for the same year amounted to \$106,162.88. The Hamilton Radial earns \$960.63 per mile of line; the London and Port Stanley \$3,660. The London and Port Stanley is prosperous; the Hamilton Radial is maintained only on advances made by the Dominion Power and Transmission Company.

There can be no question but that it is entirely in the public interest to have railways self-sustaining and capable of making the expenditures which the constant demands of transportation from time to time entail. The Hamilton Radial pays interest at only 7 per cent on a capitalized value of \$13,723 per mile of line. The property unquestionably is worth much more. In so far as the merits go, there is no question but that the company is entitled to a larger revenue and to increase its rates to those enjoyed by the London and Port Stanley Railway Company. As I see it, however, the case cannot be dealt with on its merits.

Certain portions of the company's tracks are laid under municipal by-laws and subject to municipal franchise. The by-law of the township of Saltfleet, section 18 (a), reads as follows:—

“The said company may charge and collect from any person on entering any of their cars for riding on any part of their railway the following fares: For any distance less than three miles 5 cents, and for any greater distance 2 cents per mile, and for a return trip from Hamilton to Burlington or Burlington to Hamilton the sum of 25 cents.

The by-law of the village of Burlington, section 32 (b) reads:—

“The company shall carry passengers for a rate not exceeding five cents each from any point within the limits of the village of Burlington to the Burlington canal, and shall carry passengers from Burlington canal to any point within the limits of the village of Burlington for a fare not exceeding five cents each, and children in arms shall be carried free, and the company shall sell tickets to school children residing in the village of Burlington desiring to use the company's cars for the purpose of going to or coming from a public or private school, in the city of Hamilton, at a price not exceeding forty-six tickets for \$1.85, but shall not be required to sell less than forty-six tickets to any one or more of such school children, and each of such tickets shall be good for one fare from any point in the village of Burlington to any point in the city of Hamilton, and from any point in the city of Hamilton to any point in the village of Burlington, for school purposes only.”

Section 37:—

“The company may carry passengers and charge and collect from every person on entering any of their cars or carriages for riding any distance on their railway within the village of Burlington in the same continuous route, a sum not exceeding five cents, except children under five years of age accompanied by their parents or other persons having them in charge, such children will ride free, provided they do not occupy seats, and the company shall carry children between the ages of five and twelve years any distance on their railway within the village of Burlington in the same continuous route for a cash fare of not more than three cents each, provided also that the payment of the said fares of five cents and three cents, respectively, hereinbefore mentioned shall entitle the person so paying the same to ride in the cars or carriages of the company from any point within the limits of the village of Burlington to the Burlington canal, and all such persons may return in the cars or carriages of the said company from said Burlington canal to any place within the limits of the village of Burlington upon payment of the said rates as aforesaid in this clause mentioned; and it is hereby declared and provided that the rate of fare payable by any adult now or hereafter residing in the said village of Burlington for riding in the company's cars or carriages from any place within the limits of the village of Burlington to any place within the limits of the city of Hamilton, and returning to any point within the said village on the line of said company shall not exceed the sum of twenty-five cents.”

Section 38:—

“The said company shall keep tickets for sale upon their cars and shall sell tickets to persons desiring the same at a rate not exceeding twenty-five cents for six tickets, and each of such tickets shall be good for one fare to any point on their line within the limits of the village of Burlington to the Burlington canal and from the Burlington canal to any point within the limits of the said village of Burlington.”

Section 19 (a) of the by-law of the township of Nelson reads:—

“The said company may charge and collect from any person on entering any of their cars for riding on any part of their railway the following fares: For any distance less than three miles, five cents, and for any greater distances two cents per mile, and for return trip from Hamilton to Burlington, or Burlington to Hamilton, the sum of twenty-five cents, and for return trip from any point on the company's line in the township of Nelson east of the village of Burlington to the city of Hamilton and return, the sum of thirty cents.”

The by-law of the city of Hamilton also has rate stipulations which, however, are not of moment, as it was shown at the hearing that the company was not now permitted to carry passengers in Hamilton, and the stipulations referred merely to Hamilton traffic.

It was urged at the hearing, as well as in written submissions, that the agreements with the municipalities absolutely concluded the matter, and that the rates could not be increased.

The Railway Act leaves the whole subject of rate regulation in the hands of the Board. The matter is not left so that certain shippers or municipalities can obtain unduly low or discriminatory rates, whether by agreements or otherwise. Shippers and passengers cannot be discriminated the one against the other, nor can one locality or municipality obtain any more favourable treatment than the other. In other words, discrimination cannot be practised either as between localities or individuals.

Township regulations, which can cover only a part of the line, of necessity give way to power regulation over the whole and under which high rates on the one hand can be cut down, or unduly low rates on the other hand raised. The general jurisdiction of the Board under the Railway Act is not, therefore, ousted by any municipal agreement.

The Hamilton Radial, in the first instance, was a line incorporated and constructed under the legislature of the province of Ontario. Under its Act of incorporation and under the Ontario law, it was open to municipalities to enter into franchise agreements and pass franchise by-laws, and the company then became bound by these.

After the hearing, on looking into the company's statutory position, I find that it was declared to be a work for the general advantage of Canada by chapter 117 of the Acts passed by the Dominion Parliament in the year 1908. Section 10 of that Act reads as follows:—

“Nothing in this Act contained, or done under or by virtue of the powers hereby granted, shall alter or affect the provisions contained in any by-law of any municipality heretofore passed relating to the company, or to any portion of the company's railway heretofore or hereafter constructed, or contained in any agreement between any municipality and the company; but all such agreements and by-laws shall continue and remain in full force as between the municipality and the company as continued and incorporated by this Act; and in case of any inconsistency between the provisions contained in any such by-law or agreement and the provisions of The Railway Act, the provisions contained in the by-law or agreement shall prevail, and all such by-laws and agreements and all rights, franchises, privileges, and exemptions of the company thereunder are hereby confirmed.”

In view of this section and following the opinion adopted by the Board, having regard to the provisions of the Crow's Nest Pass Act and agreement, in my opinion the Board is bound by the provisions of the municipal by-laws referred to, and ought not to authorize any tariff which would create charges higher than those stipulated in the different by-laws for the services set out in the by-laws.

I do not repeat the grounds on which this opinion is based; it will be found in the *Increased Rates Case*, 22 *Can. Ry. Cas.* 49, at pp. 57-60. In my view, therefore, the only order that can be made is to allow the rates of the Hamilton Radial to be increased to those enjoyed by the London and Port Stanley, subject, however, to the limitations created by the municipal franchise by-laws. It is probably the case that this restriction will largely prevent any relief whatever being granted the applicant company.

The point which to my mind determines the issue was not raised at the hearing. In my opinion it is so plain and clear that nothing would be gained by setting the

case down for another hearing so that the matter could be discussed. As the company has not been heard on this question, however, it is entitled to a rehearing on this point if it so desires.

July 12, 1918.

Mr. Commissioner Goodeve concurred.

Application of the city of Port Arthur, Ont., for a subway under the tracks of the Canadian Northern and Canadian Pacific Railway Companies in River Park, just south of east end of athletic grounds, about 900 feet west of west end of Current River bridge.

File 26825.15.

Heard at Port Arthur, Ont., June 19, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

The Canadian Pacific Railway Company's main line runs through Current River park, Port Arthur. These tracks have been down for about thirty years and are admitted by the city to be senior.

By an agreement between the city and the Canadian Pacific Railway Company, dated 28th March, 1913, provision is made, among other things, for the construction of a subway under the C.P.R. tracks connecting that portion of Current River park to the north of the tracks with the park lands to the south of the tracks. By that agreement the city was to bear the entire cost of the subway, except the superstructure, which was to be borne by the railway company.

By a number of agreements made in 1916, between the city of Port Arthur and certain elevator companies, a number of elevators were to be constructed on the water front south of the park. These agreements were confirmed by the Legislature of the province of Ontario and are to be found as schedules to chapter 85 of the Ontario Statutes of 1917. Under these agreements the city undertook to provide territory upon which railway tracks could be laid to serve the elevators. The location and operation of these tracks were to be subject to the approval of this Board.

By Order No. 27225, of the 5th May, 1918, the Board approved of a plan of tracks to serve these elevators, and according to that plan there were to be six tracks parallel to the C.P.R. main line on property provided by the city for that purpose immediately south of the C.P.R. main line.

The city now applies for a subway under the proposed six new tracks. This subway is to be a continuance of the subway to be constructed under the C.P.R. main line, in accordance with the agreement of 1913 already referred to. The city is granting the right to have the six tracks as well as spur lines running southerly from them to the elevators on city property without charge. The six tracks already referred to will be on an elevated embankment which will lend itself to the construction of a subway. The city's power-house for its waterworks is south of the C.P.R. main line and the tracks in question. It will be necessary to make some provision for the city's water main to pass under the embankment, upon which the tracks will be carried, and it is suggested by the city that to prevent inconvenience to the railway companies in the future, the subway will be a convenient place for the water main to be carried under the tracks so that the water main could be repaired at any time without interference with the use of the tracks.

There is no crossing in the vicinity of the spot where the subway is applied for which could be used as a means of access to the territory south where the elevators are and where a substantial portion of the Current River park is situated.

In my opinion the subway in question must, sooner or later, be constructed; and, it is well now before the railway company's tracks which are to serve the elevators have been arranged, to provide for the proposed subway. As the subway, to be constructed under the C.P.R. main line, is limited under the agreement to a width of 30 feet, the subway now applied for should be of the same width. It does not appear that there will be any difficulty in getting sufficient head-room for the subway at the point applied for.

The chief question involved is, who should pay for the subway. The circumstances respecting the establishment of the tracks under which the subway will be built are peculiar and are different from the circumstances usually found in connection with subway applications. In this case, it cannot be said that either the railway tracks or the highway which is to run through the subway are senior, and therefore the senior and junior rule which is sometimes used as a guide by this Board in dealing with questions of cost at highway crossings cannot be invoked. The city says that as it is providing the land free for the tracks in question the railways should assume the entire cost of the subway. The railway companies take the position that as the city made its agreements with the elevator companies, to provide free railway access to the elevators, the railways should not be called upon to contribute to the cost of the subway.

It seems to me, under the circumstances, that it would be fair to divide the cost of the subway equally between the municipality on the one hand and the railway interests on the other. I would, therefore, fix the cost of constructing the subway—50 per cent city of Port Arthur, 25 per cent C.P.R., 25 per cent C.N.R. I would not fix a time when the subway was to be constructed, but would leave that open for further order of the Board on application of any of the parties concerned. The city should prepare and file plans of the proposed subway for the approval of the Board's Engineer.

OTTAWA, July 12, 1918.

Mr. Commissioner Boyce concurred.

*Application of the Town of Greenfield Park, re Montreal and Southern Counties
Railway Train Service.*

File 25357.2.

JUDGMENT.

MR. COMMISSIONER GOODEVE:

Upon the receipt of this application the Board had an inspection and report made by Inspector Lalonde who went very carefully into the situation, and reported against the granting of the application.

A copy of this report was sent the applicants under date of May 5, 1918, with the statement that the Board concurred in the views of its inspector and that the application was, therefore, refused.

Under date of June 6 the Board received a further letter from Messrs. Claxton, Harvey & Ker, solicitors for the town of Greenfield Park, in which it was pointed out that they were not satisfied with the decision of the Board and asking for a reconsideration. Sitings having been arranged at Montreal for June 10, their application was put down for hearing, and the interested parties notified by wire.

Upon the case being called, Mr. Harvey, acting for the town of Greenfield, pointed out that he had only received the notice at 10.20 of the morning of the hearing, and had not had an opportunity to prepare his case. The Chief Commissioner at once stated that if he so desired the case would be adjourned. Mr. Harvey, however, decided to go on with the case.

Mr. Chisholm, solicitor for the Grand Trunk Railway Company, present in connection with other cases, stated that he had not received any notice of this application, but was ready to go on and furnish Mr. Harvey with any information he might want.

It was stated by Mr. Meyer, chief engineer and general superintendent of the Montreal and Southern Counties Railway, that to grant the application for the special through cars would mean the putting on of an additional car in order to keep up the present local Greenfield Park schedule, and the cost of these cars at the present time was \$15,000 each.

In letter on file with the Board under date of December 11, signed by Mr. Meyer and addressed to the general manager, Mr. Powell, the following occurs in this connection:—

“When this was discussed before the Board of Railway Commissioners we pointed out that the M. & S. C. Ry. were at that time losing \$712.70 per month on that particular service. Since that time labour has increased, material has increased, cost of power has increased, but rates have remained the same, so that at the present time our monthly deficit is far in excess of the amount already on file.”

Another point raised in the application was the stopping of all Chambly and Granby cars at Greenfield Park. No evidence has been submitted that would justify the stopping of through cars. We have on file the statement by the company that they make fifty-six trips back and forth through Greenfield Park per day, with an average of about seven passengers per trip.

The application of the Montreal and Southern Counties Railway for permission to file tariffs providing for a general advance of the tolls for the carriage of passengers and freight over its lines in the manner and to the same extent as has been permitted by the Board in the case of steam railways, file 28439.3, has a direct bearing on this case. The Chief Commissioner in his judgment of July 10 has dealt very fully with the situation; the statement of revenue and expenses being carefully analyzed and the position of the company clearly shown.

In view of the judgment above referred to, a copy of which should go to the applicants, I do not think the Board would be justified in altering its decision and making the Order asked for.

OTTAWA, July 12, 1918.

The Chief Commissioner concurred.

Application of the Twin City Coal Company and other consumers of slack coal in Edmonton, for a reduction in the rates on slack coal to that city.

File 27425.17.

Heard at Edmonton, Alta., June 11, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

In order to utilize the slack from the coal mines in the vicinity of Edmonton, a number of large consumers of coal in that city arranged their furnaces so that slack coal could be used instead of the run of the mine or lump coal.

Prior to the commencement of the consumption of slack, it was of little or no value to the mine owners, and therefore was sold to the consumers of slack in Edmonton at a low rate. Taking the output of slack of a number of coal mines in the

vicinity of Edmonton, we find that the average price, per ton, at the mines, was a little over 60 cents per ton. It moved on the regular coal rate, which varied according to the distance of the haul from 20 cents to \$1 per ton.

In the 15 per cent Increase Rates Case, the Board allowed a flat increase of 15 cents per ton in the rate on coal. In many cases this was considerably less than the 15 per cent advance applied for by the railway companies.

Unfortunately, for the applicants in the present case, the 15 cents flat increase in the coal rate amounted to considerably over the 15 per cent. The most extreme case that was brought before us at the hearing was in the rate on slack from the Twin City Coal Co. Prior to the increase, the rate was 20 cents per ton. The 15 cents increase made the rate 35 cents per ton. This was a 75 per cent increase. The great bulk of the slack movement into Edmonton came from Morinville mines, which in the twenty-two months prior to the date of the hearing amounted to 93,454 tons.

The Board is asked by the consumers of slack in Edmonton to reduce the 15-cents increase. The applicants will probably be satisfied with a 10 cents reduction.

The railway companies contend that there is but one rate for coal and that it would be impracticable to differentiate between one kind of coal, slack and other kinds of coal, such as lump or mine run. The railways suggested that they would have no way of distinguishing the character of the coal that was being shipped and that much coal would be shipped as slack which really should take a higher rate. As far as I am aware, there is no separate rate for slack from coal effective anywhere in Canada, and from advice that we have received from the Interstate Commerce Commission in the United States there is no distinction made between slack, lump, or run of mine, in the freight rates in that country except in a few isolated cases.

While the 15-cent increase may appear to be somewhat excessive in some cases, I am satisfied that with the low price of slack at the mine, the consumption of that commodity will be continued in the Edmonton furnaces. If this Board were to grant the request of the applicants it would, of course, be taken as a precedent throughout the country not only in coal rates, but perhaps in other analogous commodities, and the revenues of the railway companies might be unreasonably impaired at a time when it is in the interests of all that the railways should be kept in as high a state of efficiency as possible.

I regret, therefore, that I must come to the conclusion that this application should be dismissed.

OTTAWA, July 17, 1918.

Mr. Commissioner Boyce concurred.

Complaint of Vipond Fruit Company, Winnipeg, Man., against heater charge at \$15.00 per car on bananas from Minneapolis to Winnipeg.

File 23540.8.

Heard at Winnipeg, Man., June 15, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

In Mr. Beatty's letter of May 9, giving the answer of the Canadian Pacific Railway Company to this complaint, he says:--

"The question involved in this complaint is exactly the same as that referred to in the complaint of Messrs. Plunkett & Savage under the Board's file No. 18855.18. My letter of July 4 last, in regard to this latter complaint, deals with the situation generally."

The language of the tariff in question, being C.P.R. Tariff C.R.C., W-2343, is the same as the tariff before the Board in the Plunkett & Savage complaint. Apparently the conditions respecting the Vipond Fruit Company consignment were the same as in the Plunkett & Savage case, i.e., that the consignee had a carload of bananas shipped to him in a refrigerator car from a southern point, that there was a messenger—an employee of the consignee—in charge of the car; that he got a heater from the railway company at Minneapolis, for which the railway company under the tariff quoted charged \$15 to Winnipeg, as if the company instead of having supplied a heater had supplied a heated refrigerator car in charge of an employee of the railway company.

We have already decided in the Plunkett & Savage case that the tariff does not apply to a case like the present one when merely a heater has been supplied. Therefore, the company was not justified in making the \$15 charge and there is no tariff on file providing a charge for a heater only, for a car in transit. The company was wrong in collecting any sum for the heater from the consignee.

An order should go declaring the error of the company in collecting the \$15 and permitting it to pay it back.

In the present case the complainant did not attack the applicability of the tariff, as was done in the Plunkett & Savage case, but attacked the \$15 charge on its merits, contending that it was excessive.

As the Board has come to the conclusion that the charge was wrongfully made, it is not necessary for us now to deal with the reasonableness of the rate. Doubtless, the company will file a new tariff covering the supplying of heaters in a case like the present and, if in the opinion of the complainants the charge is excessive, it can then be brought to the attention of the Board.

OTTAWA, July 17, 1918.

Mr. COMMISSIONER BOYCE:

Subject to the same conditions and stipulations as I made in the case of Plunkett & Savage, Board's file No. 18855.18, I would concur in the judgment of the Assistant Chief Commissioner. I do so only because in this, as in the case mentioned, no other tariff is applicable for the extra service asked for and rendered by the railway Company.

As in the other case, I think that a tariff should be filed covering such extra service for the protection of banana shipments under the circumstances.

OTTAWA, July 17, 1918.

Application of the Great West Coal Company, Limited, Edmonton Collieries, Limited, and Byers Mine Coal Company, for a reduction on the rate on coal on the Grand Trunk Pacific, from the Great West spur to Edmonton.

File 27425.24.

Heard at Edmonton, Alta., June 11, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

Within a radius of ten miles to the east of Edmonton, on the Grand Trunk Pacific, there are five coal mines serving Edmonton. The Humberstone Coal Company's and the Clover Bar Coal Company's switches are respective 5.12 and 5.30 miles from the Grand Trunk Pacific Railway's north yard at Edmonton. The three applicants are all served by the Great West Coal Company's spur, the switch of which is 1.65 miles further east than the Clover Bar switch, making the Great West spur 6.95 miles from the company's north yard in Edmonton.

The Humberstone Coal Company and the Clover Bar Coal Company have a rate into Edmonton at 45 cents per ton. The rate charged the Great West Coal Company, the Edmonton Collieries, Limited, and the Byers Mine Coal Company is 55 cents per ton to Edmonton. These three latter companies complain against the discrimination of 10 cents in their rate as compared with the Clover Bar and Humberstone rate of 45 cents.

At one time the Humberstone Mine was reached by a spur a short distance east of the Clover Bar spur, and it then was charged a rate equal to the rate charged the Great West Coal Company at that time. Subsequently, the Humberstone Coal Company constructed a new spur from a point on the main line of the railway, west of the Clover Bar Company, when it was then given the Clover Bar rate.

The Clover Bar station, which is .56 miles east of the Great West switch, has the Great West rate of 55 cents. The next break in the rate easterly is at Tofield—41 miles east of Edmonton—which has a rate of 75 cents.

The applicants' coal is of the same quality as that from the Humberstone and Clover Bar mines, and the applicants are competitors with the Humberstone and Clover Bar Companies in the Edmonton market.

There are no other coal mines having sidings off the Grand Trunk Pacific, between Edmonton and Tofield, other than the five already mentioned.

In justification for the additional 10 cents in the rate charged the applicants over their competitors for the 1.65 or 1.83 miles greater haul on the railway company's main line, the company says that the mines of the applicants are on the eastern side of the North Saskatchewan river, while the others are on the western side of the river, and the company has a bridge, costing \$300,000, over which the applicants' coal must be hauled. It also points out that the spur line of the Great West Coal Company is longer than that of the Humberstone or Clover Bar companies and that the yard limit board is just east of the Clover Bar switch, so that the movement to the Humberstone and Clover Bar mines is a yard movement, whereas the movement to the Great West spur must be under train order. No evidence is produced by the railway company to show that the latter movement is more expensive. As a matter of fact, it is said, that the same crew and switch engine serves all the mines in question. No charge is made in any case for switching.

The principle was adopted by the Board, in *Galbraith Coal Company v. C.P.Ry. Co.*, 10 *Canadian Railway Cases*, 325, that a too rigid adherence to a mileage basis thereby gives a sudden break between coal mines competing with each other in a common market is undesirable.

In the present case, the five mines under consideration are in competition with each other. They all ship under substantially similar circumstances and conditions. The difference in the method of service by the railway is unimportant from a financial point of view. While the coal of the applicants has to pass over a bridge, which is not traversed by the output of the other mines, it should be borne in mind that the bridge was not constructed for the purpose of serving the applicants' mines, but is necessary to carry all the company's traffic from the east to Edmonton. It is not desirable where rates are blanketed to have a break come in the middle of a coal shipping area. This has been recognized by the Grand Trunk Pacific Railway Company in the case of its rates from coal mines west of Edmonton into Edmonton.

The rate from the following points is a blanket rate of 90 cents per ton, although the distances vary from 53 to 72.4 miles:—

Wabanum.
Fallis.
Gainford.
Entwistle.
Enevsburg.

In my opinion, the principle which is recognized by the Board in the Galbraith Case, already referred to, should be followed in the present case, and the five mines in question should have the same rate.

Therefore, an order should go reducing the rate in the Grand Trunk Pacific Special Joint and Competitive Freight Tariff, C.R.C. No. 285, from the mines on the Great West Coal Company's spur, to 45 cents.

OTTAWA, July 18, 1918.

Mr. Commissioner Boyce concurred.

Application of the town of Kenora, Ont., for permission to cross the main line of the Canadian Pacific Railway Company with a road from the town of Kenora connecting the property of the Keewatin Lumber Company (Keewatin, Ont.), with the Government Road.

File No. 28645.

Heard at Winnipeg, Man., June 15, 1918.

JUDGMENT.

MR. COMMISSIONER BOYCE:

The town of Kenora applies to the Board for permission to cross the main line of the Canadian Pacific Railway at a point near to Keewatin shown on the plans filed. The application appears to be made primarily for the benefit and on behalf of the Keewatin Lumber Company, whose mills are at Keewatin but who, while the mills at Kenora (owned by the same company) are idle, are delivering the products of the Keewatin mills in the town of Kenora, and, secondly, for the encouragement of the local business. The application is not supported as being of public interest, and it is suggested that if the crossing were maintained it would be at private expense and available only to the teams of the Keewatin Lumber Company, that company offering, by letter to the town of Kenora, "to release all claims for loss or damage which it (ostensibly the Canadian Pacific Railway Company) may suffer by reason of, or through the use of, such crossing." The letter referred to is on file.

The applicant claims that if the crossing be allowed, a more level road could be obtained for the team traffic of the lumber company between Keewatin and Kenora. The evidence shows that during 1917 the lumber company delivered to both Keewatin and Kenora 1,240,000 feet of lumber, and 1,203 loads of wood. During this year, to the last of May, lumber delivered locally (to the two places) was 363,824 feet, and the wood 664 loads. The lumber company stated that the traffic to Kenora would involve about twenty teams passing over the road, and necessarily using the proposed crossing, if granted, each day.

The railway company opposed the application. It contends that the view at the proposed crossing is not good, the railway traffic is heavy, and the approach to the proposed crossing at least from one direction, is not free from danger, and that the amount of traffic estimated to pass over the crossing would make it practically a public crossing.

After the hearing the parties, judgment was reserved to permit of inspection and report by the Assistant Engineer of the Board at Winnipeg, who, after a careful examination on the ground, in which he was accompanied by, or consulted with, officers of the applicant, the railway company and the lumber company, made his report from which I extract the following clauses:—

"On going into the question of opening up the proposed crossing, which is shown in green on the map attached, I am of the opinion that the crossing which is over a double track, would be dangerous to those using it, the pro-

posed crossing is a short distance, in situation, from the Keewatin yard and just east of the spur track leading to the Keewatin Lumber Company's property.

"The crossing is not badly located, that is, as to view, except for a team approaching from the north, it could not get a clear view of a train approaching on the south track, from the east.

"It will be noticed that the Keewatin Lumber Company's teams after going over the crossing would join the highway on the north of the track, thence travelling easterly for a distance of about a quarter of a mile and recrossing the tracks of the railway company by the present overhead bridge, joining the mill road leading to Kenora.

"The present mill road, which is shown in yellow, leads from the mill, in the direction of Kenora, down a very steep hill, thence across an arm of the lake of the Woods, this road is now used by the lumber company, but not to any large extent as their lumber business in Kenora, is limited. The road cannot be called a good highway, but it could be vastly improved by cutting down the hill, which is situated just west of the highway bridge over the lake, and making other necessary improvements to the road, thereby easing the grade on to the bridge. If this were done the cost of this work, I presume, would have to be borne by the town of Kenora.

"I am of the opinion that the town of Kenora's application for the proposed crossing should not be granted on account of the danger to the people using the crossing, the railway traffic, at certain times of the year, is exceedingly heavy. Also, considering the fact, that the lumber company can use the present road although it is rough, and if they so desired, they could ship their lumber into Kenora in carload lots. Another thing to be remembered, is that, for at least five months of the year they could team their lumber over the frozen lake into Kenora."

I was not impressed, at the hearing, with the merits of the application, and the report of the Board's Engineer confirms my impression that the application is not one to be encouraged. It is based entirely upon private grounds of convenience, while public interests and regard for public safety must be the paramount consideration in dealing with such cases. It is not a case where there must be a crossing to give a way of necessity. There is already a road, which the Board's Engineer says can be greatly improved by cutting down a mill, and which has, heretofore, served for the large traffic mentioned. What is asked is a way of greater convenience to private interests—involving a crossing which endangers public safety and impedes train movement—and this only for, what may be, a temporary convenience to the private interests involved, that is, so long as the Kenora mills are unproductive and the Keewatin mills are delivering its product in the former town.

It is urged that the crossing would be a private one. That may be so—but there is much in the railway company's contention that with twenty or thirty teams a day using the crossing, passing and repassing, at a point where, during the busy season of grain movement, there would be a train passing every 45 minutes in the 24 hours, the crossing would be, to all intents and purposes, a public crossing. There is little doubt that, if it involved an easier grade, or shorter route, between these two towns, it would soon be used, rightly or wrongly, as a public crossing, with consequent increased danger to life and impediment, perhaps danger, to train movement.

Under the circumstances I think no order should be made—and that the application should be dismissed.

OTTAWA, July 18, 1918.

The Assistant Chief Commissioner concurred.

Application of residents in the vicinity of Looma, Alta., on the Canadian Northern Railway, to have the station moved to a more suitable location.

File 28572.

Heard at Edmonton, June 11, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

It appears that Looma station on the Canadian Northern Railway southeast of Edmonton, is located in a low swampy territory and that the highways leading to the present station grounds are in poor condition.

One of the Board's Inspectors has gone over the ground and examined not only the present location of the station, but the new site for which the applicants apply. The recommendation of the Inspector is that the station be moved to the point applied for which is at or near the northeast $\frac{1}{4}$ of section 34-50-23 west 4th Meridian. The proposed location he reports is satisfactory in every particular and he recommends it for the Board's approval.

The question of providing territory for the new station grounds was discussed at the Edmonton sitting and Mr. J. M. Douglas, M.P., of Strathcona, undertook to see if arrangements could be made for the donation to the company of the territory necessary for station grounds at the proposed site. The Board has now been advised by Mr. Douglas that he has received an offer from the owner of the land in question, of a grant of it to the railway company gratis, for station purposes.

I think the change in the location should be made and an order should go to that effect, on condition that the railway company is supplied the land necessary for the new site, free of charge. The station should be moved by the company to the new site on or before the 1st September next.

OTTAWA, July 23, 1918.

Mr. Commissioner Boyce concurred.

Application of the Board of Trade of Ribstone, Alta., for an order directing the Grand Trunk Pacific to erect a suitable station and employ a permanent agent at Ribstone.

File No. 22680

Heard at Edmonton, Alta., June 11, 1918.

JUDGMENT.

The ASSISTANT CHIEF COMMISSIONER:

This matter has been before the Board for some time. After a sitting of the Board in Edmonton, in June, 1917, the Board issued Order No. 26343, dated July 20, 1917, which required the railway company for the present and until the earnings at Ribstone increased and the business warrants the employment of a station agent, to appoint a caretaker, who should have authority to act as grain agent, and who should see that the station was kept clean and heated for the accommodation of passengers and to take care of L.C.L. freight and express matter.

At our recent sittings in Edmonton numerous complaints were heard about the unsuitable condition of affairs at Ribstone; both that the accommodation was unsatisfactory and that there was no one there to take care of the premises or L.C.L. shipments. It was admitted by some that a caretaker did look after the heating of the waiting-room in the winter, but he apparently did not look after the freight shipped to that point.

After the recent sittings at Edmonton, the Board instructed one of its Inspectors to visit Ribstone and report. The Inspector's report is dated July 17. He points out that part of the station building is used by the company for the storage of coal, making it necessary for perishable and package freight and express to be piled in the waiting room. The waiting room is so small that on some occasions it does not accommodate the passengers who are waiting to take the trains. Shipments are often piled on the platform and are not properly housed and are left at the mercy of the weather and pilferage. The earnings from all sources at the station for the year ending April 30 last, amounts to over \$20,000. The Board's Inspector recommends that if the station building is used entirely as a waiting room and freight shed and a place for the company's coal is provided for elsewhere, that the building is sufficient for the present, until times are more suitable for the erection of a better station. The Board's Inspector also recommends that an agent be installed on or before the first of September next.

I realize the difficulty that the railway companies are having in the present time of labour shortage in getting suitable men for permanent agents at stations. Nevertheless, as Ribstone is a prosperous village in an important agricultural section, I think bearing in mind the volume of business transacted there and the revenue the company receives for it, that an agent should be appointed and maintained at Ribstone, on and after the 1st September next.

OTTAWA, July 23, 1918.

MR. COMMISSIONER BOYCE:

This station is much congested and badly managed to the great inconvenience of the public doing business with the railway company maintaining it. That congestion must be immediately remedied, and I concur in the Inspector's suggestions as to how that should be done.

As to the appointment, now, of a permanent agent, I have great misgivings as to the efficacy of any Order the Board might make compelling the company to appoint and maintain such an agent at Ribstone. While an agent is necessary, it seems from the statements of the railway company's counsel at the hearing well nigh impossible to obtain and retain men to act in that capacity. Were it not for the Order made last year, my view would be to reduce the congestion and continue the caretaker, but the Order referred to provides for the appointment of an agent when the traffic increases—and it has increased by \$3,000 or more.

For that reason, therefore, I concur also in that part of the judgment of the Assistant Chief Commissioner. Doubtless the railway company, if, after bona fide effort, it finds itself unable, owing to pressure of war conditions, to comply with the order in this respect, it will apply, on proper material, to be relieved from that part of it.

OTTAWA, July 24, 1918.

ORDER No. 27406.

In the matter of the application of G. H. Furnival, of Edmonton, Alta., hereinafter called the "applicant," for an Order directing the Grand Trunk Pacific Railway Company to compensate the applicant for damages to his property, lot No. 16, block 13, river lot 14, in the city of Edmonton, on 105th avenue (old Clark street) alleged to have been sustained by him by the construction and operation of the company's railway tracks across Clark street.

File No. 13372.

FRIDAY, the 5th day of June, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, June 11, 1918, in the presence of counsel for the applicant, the Grand Trunk Pacific Railway Company and the city of Edmonton, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27395.

In the matter of the application of the Express Traffic Association of Canada on behalf of the express companies subject to the jurisdiction of the Parliament of Canada, for the establishment of collection and delivery limits in the city of Rossland, B.C., as shown in black on the plan filed with the Board under file No. 4214.108

SATURDAY, the 29th day of June, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Whereas the orders of the Board Nos. 13357 and 15015, dated March 30, 1911, and September 8, 1911, respectively, prescribe the zones for the collection and delivery of express traffic in the said city of Rossland,—

Upon reading the submissions filed on behalf of the Express Traffic Association of Canada and the city of Rossland, and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said order of the Board No. 15015, dated September 8, 1911, be, and it is hereby, amended by adding the following words after the words "Earl street" at the end of the second line of page 2 of the order, namely:—

"also north on Earl street from Fourth avenue to works of the West Kootenay Power and Light Company."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27392.

In the matter of the Order of the Board No. 27241, dated May 21, 1918, requiring the Canadian Pacific and the Ottawa and New York Railway Companies to provide the train service therein set forth at Finch, Ontario.

And in the matter of the application of the Canadian Pacific Railway Company for an Order amending the said Order No. 27241.

File No. 20632.

TUESDAY, the 2nd day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said Order No. 27241, dated May 21, 1918, be, and it is hereby, amended by striking out the first three lines of page 2 of the order and inserting in lieu thereof the following:—

“Any one of these trains arriving first at Finch must be held twenty minutes, when necessary, to take forward three or more passengers from a train of the other company, if by such delay connection can be made.”

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27409.

In the matter of the application of the United Farmers of Alberta for an order requiring the Canadian Pacific Railway Company to appoint a station agent at Cairns, Alta.

File No. 16989.

FRIDAY, the 5th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, June 11, 1918, the applicants and the railway company being represented at the hearing, and what was alleged, and upon reading the report and recommendation of an Inspector of the Board,—

It is ordered: That the application be, and it is hereby, refused.

2. That the Canadian Pacific Railway Company (a) appoint a caretaker at Cairns, Alta., to keep the station building clean, and when necessary heated and lighted for the arrival of passenger trains, and to see that package freight and express shipments are properly housed; and (b) remove the coal from the freight shed and repair the planking of the station platform; the work to be completed and the caretaker appointed by the 1st day of August, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27424.

In the matter of the application of the Municipal Council of the City of Victoria, British Columbia, hereinafter called the "applicant," for an order apportioning the cost of maintaining the pedestrian traffic over the existing bridge of the Esquimalt and Nanaimo Railway Company at Victoria Harbour, British Columbia.

File No. 11118.

FRIDAY, the 5th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Victoria, June 4, 1918, the applicant and the railway company being represented at the hearing and what was alleged,—

It is ordered: That the application be, and it is hereby, refused.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27434.

In the matter of the application of Thomas W. Harvey and C. C. Hale, of Mazana, B.C., on behalf of the residents of the settlement in and around Mileage 41 of the Kettle Valley Railway, between Penticton and Princeton, for an order directing the Kettle Valley Railway Company to construct a spur and shelter for freight and passengers at the said point.

File No. 28669.

FRIDAY, the 5th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and upon the report and recommendation of an Inspector of the Board concurred in by its Chief Operating Officer, the railway company consenting,—

It is ordered: That the application be, and it is hereby, refused.

2. That the Kettle Valley Railway Company erect and maintain a shelter station building and platform equal at least to the requirements of the Board's standard plan of station buildings No. 1-A at the east end of Osprey Lake station grounds on the north side of its main line between the water tank and the east switch; construct a spur to give room for at least two cars to be spotted; and grade a team track driveway to enable cars to be driven alongside and loaded from the ground, as shown on the plan on file with the Board under file No. 28669, the work herein required to be done to be completed not later than the 1st day of October, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27402.

In the matter of the complaint of the Grain Growers' British Columbia Agency, Limited, that the Canadian Northern Railway Company, although publishing rates on grain to New Westminster, B.C., makes an extra charge for delivery in that city.

File No. 28511.

SATURDAY, the 6th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Vancouver, June 6, 1918, the complainants and the railway company being represented at the hearing, and what was alleged,—

It is declared: That the rate the Canadian Northern Railway Company was authorized to charge the complainants for delivery in New Westminster of the carload of barley from Clyde, Alta., was the rate shown in its Tariff C.R.C. No. W. 884, subject with respect to delivery on the tracks of the Canadian Pacific Railway to the General Interswitching Order of the Board; that the collection by the Canadian Northern Railway Company of the toll of one cent per 100 pounds charged by the Great Northern Railway Company for its switching service was unauthorized and illegal under the said tariff, and that the Canadian Northern Railway Company is hereby granted leave to refund to the complainants the excess amount so charged and collected by it on the shipment in question.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27403.

In the matter of the application of the Municipalities of Burnaby and Coquitlam, in the Province of British Columbia, for an order requiring the Vancouver, Victoria and Eastern Railway and Navigation Company to complete the work required to be done under the order of the Board No. 26260, dated August 10, 1916.

File No. 572.45.

SATURDAY, the 6th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, June 6, 1918, the applicants and the railway company being represented at the hearing, and what was alleged; and upon reading the report of an Inspector of the Board,—

It is ordered: That the application be, and it is hereby, dismissed, with leave to the applicants to apply to the Board at any future time with respect to any of the matters arising out of the temporary timber abutment supporting the southerly end of the bridge constructed under the said Order No. 26260.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27410.

In the matter of the application of the Fort Frances Pulp and Paper Company for an order directing the Canadian Northern Railway Company to furnish sixty cars daily for the transportation of mill refuse for fuel from Beaudette, Minn., to Fort Frances, Ont.

File 18705.379.

SATURDAY, the 6th day of July, A.D. 1918.

D.ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Fort Frances, June 18, 1918, the applicant company and the Canadian Northern Railway Company being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27379.

In the matter of the application of the Hull Electric Railway Company, hereinafter called the "applicant company," for authority to file tariffs, providing for a general advance in the tolls for the carriage of passengers and freight over its line in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439.7.

MONDAY, the 8th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*D'ARCY SCOTT, *Assistant Chief Commissioner*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, May 21, 1918, in the presence of counsel for the applicant company, the town of Aylmer being represented at the hearing, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the applicant company be, and it is hereby, authorized to publish and file tariffs increasing its existing freight rates, except on coal and coke, by 15 per cent, and its rates on coal and coke by 15 cents a ton; also to increase its standard maximum passenger rate so as not to exceed 2.875 cents a mile.

And it is further ordered: That the said tariffs may be made effective in fifteen days from the date of this order, subject to the provisions of sections 327 and 331 of the Railway Act as to standard tariffs.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27404.

In the matter of the application of W. S. Henderson, of Drumheller, Alta., herein-after called the "applicant" under section 226 of the Railway Act for an Order directing the Canadian Pacific Railway Company to construct, maintain, and operate a spur near the High Level Bridge at Lethbridge, Alta.

File No. 27400.2.

MONDAY, the 8th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, June 10, 1918, in the presence of counsel for the railway company, the applicant appearing in person, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27416.

In the matter of the application of the Board of Trade of Lanfine, Alta., for an Order directing the Canadian Northern Railway Company to construct a proper depot or improve the one already erected at Lanfine station.

File No. 28600.

MONDAY, the 8th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby required, to erect a third-class station building at Lanfine, Alta.; the work to be completed by the first day of September, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27405.

In the matter of the application of John Abrey, of Souris, Man., hereinafter called the "applicant," for a ruling in the matter of fencing by the Canadian Pacific Railway Company across the river bed of the Souris river which runs through the applicant's property in the north half and in the southwest quarter of section 20, township 7, range 22, west of the first meridian.

File No. 28630.

TUESDAY, the 9th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, June 15, 1918, in the presence of counsel for the railway company, no one appearing for the applicant, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27411.

In the matter of the application of the Hull Electric Railway Company, hereinafter called the "applicant company," under sections 327 and 331 of the Railway Act, for approval of its Standard Passenger Tariff C.R.C. No. P-9 and its Standard Mileage Freight Tariff C.R.C. No. F-82.

File No. 21781.

WEDNESDAY, the 10th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

The said standard passenger and freight tariffs having been filed on the basis permitted by the Board in its Order No. 27379, dated July 8, 1918,—

It is ordered: That the applicant company's Standard Maximum Passenger Tariff C.R.C. No. P-9 and Standard Maximum Freight Tariff C.R.C. No. F-82, published to become effective July 22, 1918, be, and the same are hereby, approved; the said tariffs together with reference to this order to be printed in at last two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27421.

In the matter of the application of the London and Lake Erie Railway and Transportation Company, hereinafter called the "applicant company," under section 327 of the Railway Act for approval of its Standard Mileage Freight Tariff C.R.C. No. 6.

File No. 16374.

WEDNESDAY, the 10th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The said Standard Freight Tariff having been filed on the basis permitted by the Board in its Order No. 27106, dated April 4, 1918.

It is ordered: That the applicant company's Standard Mileage Freight Tariff C.R.C. No. 6, be, and the same is hereby, approved; the said tariff together with reference to this order to be printed in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27426.

In the matter of the complaint of E. A. McKenzie, of Arden, Man., against the refusal of the railway companies to supply him with car doors for sand and gravel shipments or to pay him for doors supplied by himself.

File No. 4106.22.

THURSDAY, the 11th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Winnipeg, June 15, 1918, in the presence of counsel for the Canadian Pacific and Canadian Northern Railway Companies, the complainant appearing in person, and what was alleged,—

It is ordered: That the complaint be, and it is hereby dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27436.

In the matter of the application of the Canadian Manufacturers' Association (Brandon section) and other interested shippers in the city of Brandon, in the province of Manitoba, for an order requiring the construction of an interchange track between the Canadian Pacific and the Grand Trunk Pacific Railways at Forrest, Man.

File No. 6713.125.

THURSDAY, the 11th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, June 15, 1918, in the presence of counsel for the applicants and the Grand Trunk Pacific and Canadian Pacific Railway Companies, and what was alleged,—

It is ordered: That the Grand Trunk Pacific Railway Company be, and it is hereby, directed to construct interchange tracks between its railway and the railway of the Canadian Pacific Railway Company near Forrest, Man.; the said railway company forthwith to file detail plans of the proposed interchange; the work to be completed within sixty days from the approval of the plans by the Board, and the expense of constructing such interchange tracks to be borne and paid by the Grand Trunk Pacific Railway Company.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27429.

In the matter of the application of the Freight and Express Underwriters of Toronto, Ont., for the same rating for zam-buk as is provided in the Canadian Freight Classification for vaseline.

File No. 19367.77.

FRIDAY, the 12th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, June 24, 1918, the applicant and the Canadian Freight Association being represented at the hearing, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27437.

In the matter of the application of residents of Oakville, Ont., for an order directing the Grand Trunk Railway Company to stop, during the summer months, its train No. 103 leaving Toronto for Hamilton at 4.10 p.m., at Oakville.

File No. 27563.2.

MONDAY, the 15th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, June 24, 1918, in the presence of counsel for the applicants, no one appearing for the railway company, and what was alleged; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, required to stop its train No. 103 at Oakville, Ont., when there are passengers for that point from Toronto; this order to remain in effect until the 15th day of September, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27438.

In the matter of the complaint of the Montreal Board of Trade against the proposed cancellation of the present commodity rates on glass bottles in carloads from Hamilton and Toronto, Ont., and Montreal, Que., published and filed in the Canadian Pacific Railway Company's Supplement No. 77 to Tariff C.R.C. No. E. 3210, effective July 25, 1918, and in the Grand Trunk Railway Company's Supplement No. 73 to Tariff C.R.C. No. E. 3426, effective July 28, 1918.

File No. 490.

WEDNESDAY, the 17th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the railway companies.—

It is ordered: That the Canadian Pacific Railway Company's Supplement No. 77 to Tariff C.R.C. No. E. 3210, effective July 25, 1918, and the Grand Trunk Railway Company's Supplement No. 73 to Tariff C.R.C. No. E. 3426, effective July 28, 1918, cancelling the present commodity rates on glass bottles in carloads from Hamilton and Toronto, Ont., and Montreal, Que., be, and they are hereby, suspended pending hearing on a date to be fixed by the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27439.

In the matter of the application of the Ontario Turnip Association and others for the suspension of supplements to tariffs of the Canadian Pacific, Grand Trunk, and Toronto, Hamilton and Buffalo Railway Companies, by which it was proposed to cancel through rates on turnips in carloads from stations in Ontario to points in the southern United States.

File No. 28106.1.

WEDNESDAY, the 17th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading what has been submitted on behalf of the applicants,—

It is ordered: That Supplement No. 7 to the Toronto, Hamilton and Buffalo Railway Company's Tariff C.R.C. No. 502, Supplement No. 20 to the Grand Trunk Railway Company's Tariff No. E. 2619, and Supplement No. 9 to the Canadian Pacific Railway Company's Tariff C.R.C. No. E. 2461 be, and they are hereby, suspended, pending hearing on a date to be fixed by the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27446.

In the matter of the application of the Essex Terminal Railway Company, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open for the carriage of freight traffic its line of railway through portions of the town of Ojibway, the townships of Sandwich West and Anderdon, and the town of Amherstburg, all in the province of Ontario to the southerly limit of lot No. 4 in the town of Amherstburg (formerly in the first concession of the township of Anderdon), Ontario.

File No. 3704.6.

THURSDAY, the 18th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner*S. J. McLEAN, *Commissioner.*

Upon the filing of the necessary affidavit, and the report and recommendation of the Assistant Chief Engineer of the Board,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of freight traffic that portion of its railway from a point on the north side of the Titcombe road, in lot 51, in the town of Ojibway, to the south side of lot No. 4 in the town of Amherstburg (formerly the first concession of the township of Anderdon), all in the province of Ontario, a distance of about 10.5 miles, provided that the speed of trains operated over the said portions of railway be limited to a rate not exceeding fifteen miles an hour.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27452.

In the matter of the application of the residents of Massett, Queen Charlotte Islands, in the province of British Columbia, for an order directing the Grand Trunk Pacific Steamship Company to reduce its freight rates from Vancouver and Prince Rupert, B.C.

File No. 28571.

THURSDAY, the 18th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Vancouver, June 6, 1918, in the presence of counsel for the Grand Trunk Pacific Steamship Company, no one appearing for the applicants, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27451.

In the matter of the application of the Central Vermont Railway Company, hereinafter called the "applicant Company," under the amending Act 7-8 Edward VII, section 11, chapter 61 for approval of a resolution passed by the executive committee of applicant company at a meeting held June 28, 1918, authorizing N. W. Hawkes, general freight agent of the company to prepare and issue tariffs of tolls to be charged on the said railway.

File No. 1036.

FRIDAY, the 19th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said resolution be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 168.

File No. 28780.

Destruction of Stations by fire, etc.

July 16, 1918.

With respect to stations destroyed by fire or other cause, all railway companies subject to the jurisdiction of the Board are hereby required to report to it the particulars of the destruction of such station buildings, whether by fire or otherwise, immediately after the occurrence.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

AUG 10 1918

The Board of **Railway Commissioners for Canada**

Judgments, Orders, Regulations, and Rulings

Vol. VIII

Ottawa, August 3, 1918

No. 10

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Report of the Board of Railway Commissioners for Canada to the Governor in Council under the direction given by Order in Council No. 1768, to prepare a schedule of rates which will grant similar increases in railway freight rates in Canada to the increases already granted in American territory, effective as of August 1, 1918.

File No. 28678.

Under Order in Council No. 1768, the opinion is expressed that, in view of the increased cost of living, the wages in Canadian territory should be increased as increased in American territory by the award commonly known as the McAdoo Award, as the same may from time to time be amended or extended, in so far as the Government Railway Systems are concerned; and that it is advisable, in the public interests, that the companies privately owned should make similar increases to their employees.

The Order definitely advances the scale of wages of railway employees as fixed by the McAdoo Award for lines of railway owned, operated, or controlled by the Government, and recommends that the wage scale of privately owned railway companies in Canada should be similarly advanced.

The Order further provides that should the privately owned railway companies adopt the McAdoo schedule, the Board of Railway Commissioners shall forthwith prepare a schedule of rates which will grant similar increases in railway freight rates in Canada to the increases already granted in American territory, effective as of August, 1, 1918.

The railway companies have notified their employees of their acceptance of the McAdoo scale. The effect of the Order is to reimburse the companies for the additional increased cost to which the railways will be put by the adoption of the scale and in their railway operation. The advance is limited to freight rates, and is also limited to the advances already made in United States territory for the same purpose.

The estimates of the increased costs filed by the Canadian Railway War Board show a total increased cost of \$50,616,226, in addition to which there are further claims to be settled by the McAdoo Award which, if settled adversely to the companies, might call for an additional sum of \$19,930,000, making a possible outlay of \$70,546,260.

The McAdoo Award is popularly supposed to increase rates 25 per cent. In some instances, not amounting, however, to a great volume, the McAdoo Award exceeds this percentage. In a larger number of instances, owing to maximum advance limitations and to a flat rate increase, which, while advancing in a higher percentage the rate for the shorter mileages, holds down all longer movements, the increase of 25 per cent is not obtained.

The Railway Statistics for 1917 show the total freight earnings of all systems in Canada as amounting to \$215,245,256.49. This total amount includes railways which are not under the jurisdiction of Parliament and whose increases are not mirrored in the companies' estimates. The difference, however, would not be very great.

Assuming, however, that the whole amount represented earnings of companies under the jurisdiction of Parliament, and assuming, further, that the increases under the McAdoo scale would net in gross the whole 25 per cent, which they will not, the total amount of the resultant increases under the McAdoo Award would amount to \$53,811,314. These figures, however, cannot be accepted. On the one hand the freight earnings in 1917 were very large—the volume may not prove representative—but on the other hand, as rates have already been increased, the resultant gross revenues may well be much larger. As the Board has not had the time necessary to compile statistics based on the newer rates, the American increases, which were arrived at as necessary in American territory after much investigation, are treated as those necessary, subject to the recommendation hereinafter made for rate reduction.

The increases herein covered are those permitted under the Order of the Director General of the United States Railroad Administration when the Canadian rate situation permits the adoption of the whole increase, and in other instances the extent that the increases may be adopted.

Different action has been taken in the United States in connection with their eastern and western territories. Different action has also been taken by the Board. In order to arrive properly at a conclusion the different increases already granted by the Board in Canada in many instances will have to be deducted before the gross increases granted in the United States are given full effect. As the increases made by the Board differ in eastern territory as against the western territory, it is necessary that the matter be dealt with separately.

Rate decisions increasing rates in eastern territory have been made from time to time in both jurisdictions. At a comparatively recent date the rates in eastern United States territory were increased by varying, but large, percentages. No such increase took place in Canada, but a general increase was made in Canada under the Board's Judgment in the "Fifteen Per Cent Case." It is impossible at the moment to report the full effect of the increases in both countries for the past few years. In arriving at the net increase which ought to be given in Canada in order to make similar increases to those made in the States, the Board, therefore, has not considered any increase granted in either jurisdiction prior to the application of the so-called "Fifteen Per Cent Case" in both countries, justification for these applications being the increase of all costs, and, therefore, a proper point at which to commence.

Section 1.—Territory east of Fort William—Class Rates.

The Interstate Commerce Commission on June 29, 1917, granted a 15 per cent increase in the class rates in eastern United States territory. This Board made a similar increase in class rates in eastern territory on December 26, 1917. The order of the Honourable the Director General of the United States Railroad Administration (for the sake of brevity hereinafter called the "McAdoo Order"), gives a direct increase of 25 per cent in the United States eastern class rates. As similar increases have been granted in both territories in order to bring the final increase to a parity, an increase of 25 per cent in Canadian territory ought to be made in the existing schedules.

A result of the McAdoo Order is to create a direct advance in the minimum charge. As a result of this increase all class rates are increased more than 25 per cent, in so far as all movements up to 25 miles are concerned.

Section 1, subsection (d) of the McAdoo Order reads: "After such increase no rates shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown below for the several classifications."

Official classification scale:—

1.	2.	3.	4.	5.	6.
25	21½	17	12½	9	7

cents per 100 pounds.

In order to carry the McAdoo increases into effect in Canada, while it will be necessary to repeat Mr. McAdoo's provision as to minima, the proper first-class minimum rate in Canadian territory is 24 cents rather than 25 cents, having regard to the Canadian rate scale. This is practically the same increase.

In addition to the percentage increases the McAdoo Order provides that the minimum charge on less than carload shipments shall be that provided in the classification governing, but in no case less than 50 cents. The minimum charge in Canada is in no case less than 35 cents. The increase involved, therefore, is 15 cents.

Section 2 (c).—Commodity rates.

Rates on coal were increased by the Board's Order of December 26, 1917, by 15 cents per ton flat. Similar increases were since granted by the Interstate Commerce Commission. The increases, however, were not put generally into effect as in Canadian eastern territory. The McAdoo Order, however, reads:—

"Where rates have not been increased since June 1, 1917, the increase to be made now shall be determined by first adding to the present rate fifteen (15) cents per ton, net or gross as rated, or if an increase of less than fifteen (15) cents per ton, net or gross as rated, has been made since that date, then by first adding to the present rate the difference between the amount of that increase and fifteen (15) cents per ton, net or gross as rated; and to the rates so constructed the above increases shall now be added."

As a result the increases granted under the McAdoo Order for the coal traffic are increases calculated either on a previous 15-cent advance, or else on a 15-cent advance made necessary and justified by the Order itself. The conditions are, therefore similar in the two territories. In order to give the railways in Canada similar increases as in the United States it will be necessary to adopt the section of the McAdoo Order giving the coal schedules, reading as follows:—

Commodity.	Increase.
Where rate is 0 to 49 cents per ton . . .	15 cents per net ton of 2,000 pounds.
" 50 " 99 " " . . .	20 " " " "
" \$1 " \$1.99 " " . . .	30 " " " "
" \$2 " \$2.99 " " . . .	40 " " " "
" \$3 or higher per ton . . .	50 " " " "

Coke stands in exactly the same position as coal in so far as increases in both countries are concerned. The increase in the McAdoo Award, however, is higher than in the case of coal, the rates being advanced to the following scale:—

Where rate is 0 to 49 cents per ton . . .	15 cents per net ton of 2,000 pounds.
" 50 " 99 " " . . .	25 " " " "
" \$1 " \$1.99 " " . . .	40 " " " "
" \$2 " \$2.99 " " . . .	60 " " " "
" \$3 or higher per ton . . .	75 " " " "

It is unfortunate that through rates do not apply on movements of coal and coke to Canadian points.

Prior to the McAdoo Order the rate on anthracite in American territory was \$2.15 to Buffalo. Under the McAdoo Order that rate became \$2.60. The present Buffalo-Toronto rate is 81 cents. Under the McAdoo Order that rate would become \$1. The increase on the McAdoo Order, if the traffic moved under a joint tariff, would be held

down to an increase of 50 cents in all; a difference of 14 cents as against an increase under the present system of 64 cents. This matter is entirely out of the hands of the Canadian railway companies or this Board.

Section 3.—Iron Ores.

While commodity rates were generally advanced by the Interstate Commerce Commission, iron ores were made an exception in Canadian eastern territory. This Board increased the rates on iron ores 15 per cent. The McAdoo Order deals with the movement of this commodity as follows:—

“Thirty cents per net ton of 2,000 pounds, except that no increase shall be made in the rates on ex-lake ore that has paid one increased rail rate before reaching lake vessel.”

The reference to an increased rail rate in connection with the boat movement does not of necessity show any general increase in the iron ore rate. The Board is not advised of any general increase in American territory. The effect of the 30-cent increase is to give a greater increase than that already given by the Board on all traffic carried at a rate of less than \$2 per ton, while it holds down the increase for the longer movements. To place the increases on a parity the Board's increase of 15 per cent should be struck out and 30 cents per net ton added to the former Canadian rate.

Section 4.—Stone, artificial and natural, building and monumental, except carved, lettered, polished, or traced.

In United States territory the Interstate Commerce Commission by its Order of March 12, 1918, increased the commodity rates, with certain exceptions in which stone is not included, by 15 per cent. The Board has made a similar increase in its judgment of December, 1917, in eastern territory. The increase in the McAdoo Order amounts to 2 cents per 100 pounds, and the like increase will follow in Canadian territory.

Section 5.—Stone, broken, crushed and ground.

This stone is of low value and for that reason the Canadian Board held down the increase in its “Fifteen Per Cent Case” to a flat addition of 5 cents a ton. An increase was allowed of 15 per cent in American territory. As many of the hauls are comparatively short there probably is not much disparity in the results in the two countries; the Canadian increase would be somewhat the smaller. The advance under the McAdoo Order is 1 cent per 100 pounds. The same increase should be made in the corresponding Canadian territory.

Section 6.—Sand and Gravel.

These rates are in exactly the same position as stone, broken, crushed and ground. The McAdoo Order allows a similar increase of 1 cent per 100 pounds and the same increase should be here allowed.

Section 7.—Brick, except enamelled or glazed.

Similar increases have been granted in both countries by the respective commissions. The McAdoo Order allows an advance of 2 cents per 100 pounds, which should also be permitted in Eastern Canada.

Section 8.—Cement.

An increase of 15 per cent has already been made in Canada. Specific advances were also allowed by the Interstate Commerce Commission on January 15, 1918, in so far as a very large amount of traffic in American territory is concerned

It is impossible to state what the actual results of the increase over the whole field may be, increases having been made in both territories, some of those in the United States being much heavier than the Canadian increase of 15 per cent. The increase under the McAdoo Order, which amounts to 2 cents per 100 pounds can be applied.

Section 9.—Lime and Plaster.

Lime is not excepted from the increase of 15 per cent in commodity rates given by the Interstate Commerce Commission and already has been increased by the Board 15 per cent. The addition of the increase under the McAdoo Order of $1\frac{1}{2}$ cents per 100 pounds in Eastern Canada will restore the parity.

Section 10.—Lumber and other Forest Products not otherwise herein specifically dealt with.

An increase of 15 per cent was granted by the Board of Railway Commissioners in Eastern Canada. An increase was also given in American eastern territory by the Interstate Commerce Commission, but the increase made by the Interstate Commerce Commission was held down to an increase of 1 cent per 100 pounds. In order to put the increase on a parity the increase of 15 per cent already allowed by the Board will have to be taken off, and 1 cent added to the former tariff, which will then be increased by 25 per cent but not exceeding 5 cents per 100 pounds.

Section 11.—Pulpwood.

The Canadian Board allowed an increase of 15 per cent on pulpwood. In the Main and New Hampshire districts, where pulpwood is produced and comes directly into competition with Canadian pulpwood, the American railways put into force an advance of 15 per cent before the McAdoo Order was made, and on international business the increase granted by the McAdoo Order, which amounts to 25 per cent, but not exceeding 5 cents per 100 pounds, is already in effect. Parity is, therefore, obtained by increasing the present rates in Canada as provided by the McAdoo Order.

Section 12.—Cordwood, Slabs and Mill Refuse for Fuel Purposes.

The rates on these articles were advanced 15 per cent in Canada under the Board's Judgment. Under the Order of the Interstate Commerce Commission an increase was granted of 1 cent per 100 pounds in some instances and 15 per cent in others. Under the McAdoo Order the rates take an advance of 25 per cent, but not exceeding an increase of 5 cents per 100 pounds. Taking the rates for a 60-mile haul, the Canadian position is as follows:—

Prior to the 15 per cent increase the rate was $4\frac{1}{4}$ cents, the increase being to 5 cents. Applying the McAdoo Order on the present Canadian rate of 5 cents, the rate would become $6\frac{1}{2}$ cents. A considerable quantity of cordwood is hauled 125 miles. The old rate for this distance was $5\frac{1}{4}$ cents, the "Fifteen Per Cent Case" made it 6 cents, and the McAdoo advance would make it $7\frac{1}{2}$ cents, while if the Interstate Commerce Commission's increase of 1 cent was added to the original rate and the McAdoo increase added, the rate would be 8 cents. The railways' attention has been called to the fact that owing to the shortage of coal it is desirable that as much cordwood be carried as possible. While the railways insist that the expense to which they have been put, having particular regard to the recent increase in wages, are such that the whole increase of the McAdoo Order would be absolutely required, under the circumstances the railways raise no objection if, instead of applying the full increase, a flat increase of 1 cent over the present rate is applied to the whole movement. The result would be that the increase on this commodity would make the new rate for 60 miles 6 cents instead of $6\frac{1}{2}$ cents, and for 125 miles 7 cents instead of $7\frac{1}{2}$ cents.

Section 13.—Wheat.

The Board advanced the rate in eastern territory 15 per cent, subject to a maximum increase of 2 cents per 100 pounds. The Interstate Commerce Commission had advanced the rate in American territory 15 per cent without limiting the increase by a maximum.

Comparative increases will be secured by the companies carrying the former judgment of the Board into effect without the limit imposed of 2 cents per 100 pounds, and adding the increase provided by the McAdoo Order, which amounts to 25 per cent, but not exceeding an increase of 6 cents per 100 pounds.

Section 14.—Other Grains, Flour and other Mill Products.

These rates should be treated in the same way as the wheat rates. The McAdoo Order in dealing with them reads: "25 per cent but not exceeding an increase of 6 cents per 100 pounds, and increased rates shall not be less than new rates on wheat."

Section 15.—Live stock.

Similar increases have been made in both countries by the respective commissions. The McAdoo Order increases the rates 25 per cent, but not exceeding an increase of 7 cents per 100 pounds where rates are published per 100 pounds, or \$15 per standard 36-foot car where rates are published per car.

Section 16.—Packing House Products and Fresh Meats.

An increase of 15 per cent has been made in both countries by the respective commissions. The McAdoo Order makes a further increase of 25 per cent, except that the rates published from all Missouri River points to Mississippi River territory and east thereof shall be the same as the new rates from St. Joseph, Mo. The exception is without significance, having regard to territory contiguous to Canada. The adoption of the McAdoo Order will make a parity of increase.

Section 17.—Bullion, base (copper or lead), pig or slab, and other smelter products.

Fifteen per cent increases have already been granted in both countries. The McAdoo Order increases the rates 25 per cent, and may be adopted.

Section 18.—Sugar, including syrup and molasses, where sugar rates apply thereto.

A 15 per cent increase was granted by the Interstate Commerce Commission. A 15 per cent increase was also granted by the Board. Canadian eastern territory is contiguous to American territory covered by the official classification. Under the McAdoo Order sugar rates are to be advanced 25 per cent, except that where the official classification applies the fifth-class rates, as increased, will apply. Commodity rates for sugar were in effect in American eastern territory prior to the McAdoo Order and are to-day in effect in eastern Canada.

Sugar classifies 5th-class, and only moves on 5th-class, in so far as the all-rail movement from Eastern to Western Canada is concerned. The district covered by sugar commodity tariffs stops at North Bay, on the Grand Trunk, and at Sudbury, on the C.P.R. The effect of the McAdoo Order is to increase the rates on sugar between points in the United States formerly covered by commodity tariffs to a greater extent than 25 per cent. For example: the former commodity rate on sugar from New York to Detroit was 24½ cents. Under the McAdoo Order it now becomes 35, an increase of 42 per cent. From New York to Chicago the commodity rate was 31½; new rate, 45 cents; a percentage increase of 43 per cent. The New York to St. Paul and Duluth rate was 38½ cents; new rate, 65 cents; a percentage increase of 69 per cent.

As the commodity rates in Eastern Canada were not based on any fixed proportion of the 5th-class, the percentage of the resulting increase would change in almost every instance. As similar increases were made in both countries before the McAdoo Order, the parity of treatment in increases will be obtained by providing for an increase of 25 per cent, except that in Canada, where the Canadian Freight Classification applies, the 5th-class rate as increased would be substituted.

The effect of the McAdoo Order on the sugar movement from Montreal to Toronto would be as follows:—

The present rate is $18\frac{1}{2}$ cents per 100 pounds, while the present 5th-class rate is $26\frac{1}{2}$ cents, and as increased under the McAdoo Order would be 33 cents. As a result the rate would be increased $14\frac{1}{2}$ cents per 100 pounds, or 78.3 per cent.

The increase would make the freight costs 0.33 cents per pound as against 0.185 cents per pound, and on a 10-pound purchase by the consumer 3.3 cents as against 1.85 cents.

Section 19.—Ice.

No authority to increase ice rates in American eastern territory prior to the McAdoo Order appears. Under these circumstances, the increase of 15 per cent allowed by the Board should be cancelled, and the McAdoo advance of 25 per cent should be calculated on the former rates.

Section 20.—Commodity Rates Not Included in the Foregoing.

These should be increased 25 per cent as allowed by the McAdoo order.

Section 21.—Territory West of Fort William.—Class Rates.

No increase was made in class rates in western territory by the Interstate Commerce Commission. An increase of 15 per cent was allowed by the Board. As a result the increase granted by the Board should be cancelled and the 25 per cent increase allowed by the McAdoo Order calculated on the old rates.

The position in so far as minimum rates are concerned, is similar to the position already covered, having regard to the eastern rates. The result is that the same minimum of 24 cents first-class, in view of the Canadian tariff construction, should be adopted in lieu of the 25 cent minimum provided by the McAdoo Order.

The minimum charge on less than carload shipments will also be increased so as to provide for a minimum charge of 50 cents, instead of 35 cents, as in eastern territory.

Section 22.—Coal.

The McAdoo Order makes the same increases on coal as in eastern territory, and in view of the provision of the Order that in any case where a flat 15 cents had not already been allowed the increased rate should be calculated upon that basis makes the situation such that to arrive at a comparative increase the full McAdoo increases must be adopted as in eastern territory.

Section 23.—Coke.

The position as to coke is exactly the same as to coal, and the increases here, again, are the same as already shown for eastern territory.

Section 24.—Iron Ores.

This is not an important movement in Western Canada. No increase was made in the American rate prior to the McAdoo Order. That Order allows a flat increase of 30 cents per net ton of 2,000 pounds except that no increase shall be made in rates on

ex-lake ore that has paid one increased rate before reaching lake vessel. As a result the existing tariffs to cover this movement should be cancelled and the 30 cents per net ton allowed by the McAdoo Order added to the rates existing prior to the 15 per cent case.

Section 24 (a).—Other Ores.

Ores other than iron, under the McAdoo Order, are covered by a general increase of 25 per cent. The American rate situation does not at all compare with the situation in Western Canada. Ore rates to Western Canadian smelters are compiled for the lower values on the rubble and dimension stone commodity mileage basis, on values exceeding \$50 to \$100 on the 10th-class distributing rates, and on values exceeding \$100 on the 10th-class standard rates. In the United States, however, the ore rates have no such relation. It is inadvisable to change the Canadian basis. Increases, however, can be obtained by advancing the Canadian rates in the same manner as the McAdoo award advances the commodity and class-rates upon which the Canadian rates are based. The district particularly interested is the Kootenay district. On low-grade ores of the value of \$5 the old rate was \$1.35 a ton from Kimberley to Trail. An increase of 10 per cent has since been made, so that the existing rate is \$1.50 per ton. Under the basis recommended this rate will become \$1.55 per ton. If the straight McAdoo increase had been applied the rate would become \$1.70 a ton. For the same movement on ores of \$15 a ton the old rate was \$1.65, increased to \$1.80, and the proposed increased rate will be \$1.85. Under the McAdoo award the increased rate would amount to \$2.10.

The increases on the rubble and stone commodities are but 1 cent per 100 pounds, and the increases in the ore rates are thus held down. Values from \$25 to \$50 inclusive are based on the dimension stone commodity tariff. The increase here under the McAdoo Order is 2 cents per 100 pounds, and the result is that on the same movement of ore of the \$25 value the old rate of \$1.90 a ton, which has been increased to \$2.10 a ton, and would move at a rate of \$2.30 a ton. Under the McAdoo Order the rate would be \$2.40.

For the \$50 ore the old rate was \$2.80, the rate as increased is \$3.10, and the increase which should be allowed would bring the rate up to \$3.20. In this case the McAdoo Order would allow an increased rate of \$3.50. On \$100 ore the old rate was \$4 per ton; as increased \$4.40 a ton and would become \$5. It is to be observed that the basis of the McAdoo increase would make the same \$5 rate.

Over the above the ordinary ore rates there are other ore rates covering train load lots. These have been increased in Canadian territory. The increases granted ought to be disallowed and the new rates be based on the former rates, plus an advance by 25 per cent as per the McAdoo Order.

Section 25.—Stone, artificial and natural, building and monumental, except carved, lettered, polished or traced.

The rates on these commodities were advanced by the Board in the "Fifteen Per Cent Case." No advance was made by the Interstate Commerce Commission. The advanced tariff approved by the Board should be cancelled, and the 2 cents per 100 pounds called for by the McAdoo Order added to the tariffs as they existed prior to the "Fifteen Per Cent Case."

Section 26.—Stone, broken, crushed and ground, sand and gravel.

The rates on those commodities were advanced by the Board in the "Fifteen Per Cent Case." No advance was made by the Interstate Commerce Commission. The advanced tariff approved by the Board should be cancelled, and the 1 cent per 100 pounds called for by the McAdoo Order added to the tariffs as they existed prior to the "Fifteen Per Cent Case."

Section 27.—Brick, except enamelled or glazed.

The rates on this commodity were advanced by the Board in the "Fifteen Per Cent Case." No advance was made by the Interstate Commerce Commission. The advanced tariff approved by the Board should be cancelled and the 2 cents per 100 pounds called for by the McAdoo Order added to the tariffs as they existed prior to the "Fifteen Per Cent Case."

Section 28.—Cement.

The position of relative increases is similar to that in eastern territory and the same action may be taken.

Section 29.—Lime.

An increase of 15 per cent has already been made in Canada. No increases were allowed by the Interstate Commerce Commission. The advanced tariff approved by the Board must be cancelled and the increase under the McAdoo Order, which amounts to 1½ cents per 100 pounds, applied in the former rate.

Section 30.—Lumber.

The most important movement in western territory is from British Columbia, which province together with Washington and Oregon are closely in relation one to the other in the production of lumber. The Canadian mills sell in the United States territory in competition with the American producer, and the American producers sell in Canadian territory in competition with British Columbia mills. The original rates were the same. The rate from Vancouver to Winnipeg was 40 cents. The rate from Portland and from Seattle to St. Paul and Winnipeg was also 40 cents, the Winnipeg rate being competitive.

Some years ago the American lines, with the subsequent approval of the Interstate Commerce Commission, advanced their rate from 40 to 45 cents to St. Paul, although for competitive purposes, owing to the fact that the Canadian lines could not increase their rates, the United States 40 cent rate to Winnipeg was maintained.

The matter of lumber rates was considered by the Board in the "Fifteen per cent Case." The situation was found to be such that no flat 15 per cent increase could be allowed. The consideration of chief importance in lumber rates was found to be the relation one to the other, having regard to the different points of production in Canadian territory. Certain advances were allowed, and among them the rate Vancouver to Winnipeg was advanced to 45 cents. The main rate was, therefore, restored to a parity with the American rate as formerly. Under the McAdoo Order the American lines have increased their rate to St. Paul and Minneapolis from 45 to 50 cents. Other rates in American territory have been advanced to the full 25 per cent allowed by the McAdoo Order, subject to the maximum of 5 cents. The increase given by the Board in the "Fifteen Per cent Case" practically restored parity between the Canadian and American rates. If the increase allowed by the McAdoo Order of 25 per cent, subject to a maximum of 5 cents per 100 pounds is allowed in the existing tariffs, that parity would be maintained. The increases will, of course, extend not only to movements in local territory, but also to eastern Canada and to the Eastern States.

Other sources of local supply are the northern spruce belt and the Lake of the Woods, Rainy River and Thunder Bay districts.

Under the McAdoo Order these rates will take the same advance.

Section 31.—Grain and Grain Products to Fort William and Port Arthur.

These rates in Canadian western territory are lower than the rates in contiguous American territory. The American hauls are to the terminals at St. Paul, Minneapolis and Lake Superior ports. All these terminals take the same rate. The haul

within Canadian territory is to Port Arthur and Fort William. For example, the rate from Garrison, Mont., to Minneapolis, a haul of 1,172 miles, was 33 cents. The haul from Lethbridge to Fort William, 1,177 miles, had a 23-cent rate.

Under the McAdoo Order the rate from Garrison moved up a further 6 cents, making that rate 39 cents, while under the Board's Order the grain rate from Lethbridge was increased 2 cents, making that rate 25 cents, so that the difference became much accentuated. The parity of increase in haul, although, of course, not in rate, which is not for a moment recommended, can be easily obtained by adding the increase under the McAdoo Order to the old rates for mileages substantially similar to those in the United States. The following table is submitted as showing the results of the application of the McAdoo scale on this basis to points representing different mileages:—

To Fort William, Port Arthur and Westfort, Ont.

From	Miles.	Old Rate.	Present rate as increased by Board.	New rate based on McAdoo increase for similar U. S. Mileages.
Winnipeg, Man.....	420—CP.....	10	12	14
Port. la Prairie, Man.....	475—CP.....	12	14	16
Brandon, Man.....	553—CP.....	13	15	17 ¹ / ₂
Minnedosa, Man.....	554—CP.....	13	15	17 ¹ / ₂
Souris, Man.....	570—CP.....	14	16	18 ¹ / ₂
Dauphin, Man.....	613—CN.....	15	17	19 ¹ / ₂
Arcola, Sask.....	672—CP.....	16	18	21 ¹ / ₂
Estevan, Sask.....	710—CP.....	17	19	22 ¹ / ₂
Weyburn, Sask.....	735—CP.....	18	20	24
Regina, Sask.....	777—CP.....	18	20	24
Moosejaw, Sask.....	819—CP.....	18	20	24
Swift Current, Sask.....	929—CP.....	20	22	26
Maple Creek, Sask.....	1014—CP.....	21	23	27
Saskatoon, Sask.....	900—CP.....	22	24	28
Biggar, Sask.....	960—GTP.....	23	25	29
Kindersley, Sask.....	1066—CN.....	24	26	30
Kerrobert, Sask.....	1041—CP.....	24	26	30
Hanna, Alta.....	1202—CN.....	25	27	31
Medicine Hat, Alta.....	1077—CP.....	22	24	28
Prince Albert, Sask.....	977—CN.....	23	25	29
Lethbridge, Alta.....	1178—CP.....	23	25	29
Calgary, Alta.....	1243—CP.....	24	26	30
High River, Alta.....	1278—CP.....	25	27	31
Red Deer, Alta.....	1282—CP.....	25	27	31
Edmonton, Alta.....	1243—GTP.....	25	27	31

Section 32.—Grain and Grain Products between Local Points and the Pacific Coast.

In so far as local rates and rates to Vancouver are concerned, the McAdoo Order would also increase these 25 per cent, with a maximum of 6 cents per 100 pounds. The simplest way of dealing with these movements, which are not in any way related to the American market or American competition, is to disallow the increase already made by the Board and calculate the increases on the old rates.

Section 33.—Livestock.

Attention has not been called to any increase either on the line of the Great Northern or on the Northern Pacific. These companies occupy territory contiguous to that of Canadian carriers in the west. Increases in the American livestock rates in the more southerly territory were granted in 1915. These increases would not, however, appear to control the situation. The increase already granted by the Board should, therefore, be struck out and the increase allowed under the McAdoo Order of 25 per cent, but not exceeding an increase of 7 cents per 100 pounds for rates published per 100 pounds or \$15 per standard 36-foot car where rates are published per car, added.

Section 34.—Packing House Products and Fresh Meats.

These rates were advanced by the Board in the "Fifteen Per Cent Case." No increase was allowed by the Interstate Commerce Commission. The advance under the McAdoo Order is 25 per cent. The advance tariffs authorized by the Board should be cancelled and the increase calculated on the tariffs in effect prior to March 15, 1918.

Section 35.—Bullion base (Copper or Lead), Pig or Slab and other Smelter Products.

The McAdoo Order allows an increase of 25 per cent on existing rates except that:—

1. Rates from producing points in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington to New York, N.Y., shall be sixteen dollars and fifty cents (\$16.50) per net ton with established differentials to other Atlantic Seaboard points, and
 2. Rates from points in Colorado and El Paso, Texas, to Atlantic Seaboard points shall be increased six dollars and fifty cents (\$6.50) per net ton.
- Separately established rates used as factors in making through rates to the Atlantic Seaboard shall be increased in amounts sufficient to protect the through rates as above increased.

There are three smelters in British Columbia, one at Greenwood, one at Grand Forks, and one at Tadanac (Trail).

The chief movement of the smelter products in Canadian territory is to Toronto, Hamilton and Montreal. The exact percentage of increase, owing to the blanket form of the McAdoo Order, is somewhat difficult to apply to any mileage basis, or to the Canadian rate basis. Under the Order the rates to Buffalo from Northport, which is the American smelter nearest to the Canadian group, is 71½ cents per 100 pounds. An increased rate to the Canadian carriers which would place Toronto and Hamilton on the same basis as Buffalo would be reasonable and fair. This 71½-cent rate produces a rate per ton of \$14.30. The present rate to Toronto for the Canadian haul is \$13.40. Under the McAdoo Order the Boston rate becomes \$16.90 a ton, while the New York rate is \$16.30. The Montreal rate ought to be held down to the New York rate. To territory east of Montreal in Canada the usual arbitraries should be added to the Montreal rate.

Rates to points in Western Canada should take the advance of 25 per cent as provided by the McAdoo Order. In view of conditions existing at Canadian smelters and the cost of production of zinc, the present zinc rates for domestic purposes should be reduced to the copper and lead rates already referred to.

Section 36.—Sugar, Syrup and Molasses.

Sugar is refined in western territory in Vancouver, whence the movement extends as far east as Winnipeg. The McAdoo Order is difficult to apply to this traffic. For example, it provides that from points in California to points taking Missouri River rates and those related thereto under the Interstate Commerce Commission's 4th section order, and to points east of the Missouri river, an increase of 22 cents per 100 pounds was made. The order, of course, includes an increase of 25 per cent except in specific cases. As already pointed out in connection with the eastern movement, it makes a large increase by cancelling the commodity rates and making the increased 5th-class rates applicable. The sugar from Vancouver to destinations in the west moves under commodity rates, as eastern sugar moves locally in Eastern Canada. The eastern refiner has long alleged an undue preference which enables the British Columbia shipments to be carried as far as Winnipeg under the commodity tariff, while he, shipping all-rail to the western provinces, has to pay the 5th-class rates, and the complaint has also been made that the British Columbia tariff is out of scale. Judgment has been reserved for a considerable time by the Board in this question, but a readjustment of the sugar rates will have to be made before the question is properly and

finally determined. The fairest way of increasing the British Columbia sugar rates would appear to be to apply to these rates the same basis and principles as recommended for eastern territory.

Section 37.—Commodity Rates Not Included in the Foregoing.

These rates should be advanced by adding the increase of 25 per cent provided by the McAdoo Order to the rates as they existed prior to the increase of 15 per cent permitted by the Board, and the Board's increase disallowed.

Section 38.—General Class Rates Between Points in Eastern and Western Canada.

The eastern portion of these rates was increased 6 cents in the first-class shortly before the 15 per cent application had been made, a further increase of 10 per cent being then allowed by the Board. The increase in Western Canada was 15 per cent. The like United States rates were increased, in so far as eastern territory was concerned, approximately 10 per cent, this increase being made on the 15th of March last, the former New York-Duluth rate being \$1.18·8 1st-class and increased in July, 1917, to \$1.30. Under the McAdoo Order the rates have increased 25 per cent; so that the present rate is \$1.62½. In order to produce a like parity in Canada the McAdoo increase in eastern territory of 25 per cent will be calculated on the existing rates, but in western territory the 15 per cent already allowed by the Board must be disallowed and a 25 per cent increase made on the old rates.

Section 39.—Commodity Rates Between Points in Eastern and Western Canada.

Specific commodity rates in the separate territories have already been dealt with, and in both territories commodity rates which are not covered by specific provision are shown to require an increase of 25 per cent in order to give the increase called for under the McAdoo Order. In connection with commodity rates between eastern and western Canada the appropriate increases would, therefore, be those which would obtain hereunder in the different territories in like commodity rates therein, in so far as the portion of the rate in such territory is concerned.

Section 40.—Export and Import Rates.

Both export and import rates are cancelled by the McAdoo Order, although the right to make a differential rate has been reserved. The Canadian rate structure and traffic conditions do not permit similar action.

(a). *Export Rates.*—This question had already been dealt with by the Board.

(b). *Import Rates.*—The increases which would result by the general adoption of the increased scales for local tariffs as provided by the McAdoo Order ought not to be allowed. With the longer rail haul in Canada and the different traffic conditions obtaining, in order to do business the railways in the past have deemed it necessary to maintain an import rate basis which would be as low as that obtaining from the American port enjoying the lowest rate. Just so soon as these rates became equalled by local rates in Canadian territory local rates from that point onward obtained. The only increase that ought to be permitted in import rates, if the very proper policy of the past is continued, is to authorize increases in the import rates subject to the limitation that the rates as increased shall not exceed in any particular class or commodity the lowest import rates to the same points, from Baltimore or any North Atlantic seaport in the United States.

Section 41.—Disposition of Fractions.

In applying rates, fractions should be disposed of as follows:—

- (1) Rates in cents or in dollars and cents per 100 pounds or per package:—
Fractions of less than $\frac{1}{4}$ or 0·25 to be omitted.

Fractions of $\frac{1}{4}$ or 0.25, or greater, but less than $\frac{3}{4}$ or 0.75 to be shown as one-half ($\frac{1}{2}$).

Fractions of $\frac{3}{4}$ or 0.75, or greater, to be increased to the next whole figure.

(2) Rates per ton:—

Amounts of less than five cents to be omitted.

Amounts of five cents or greater, but less than ten cents, to be increased to ten cents.

(3) Rates per car:—

Amounts of less than twenty-five cents to be omitted.

Amounts of twenty-five cents or greater, but less than seventy-five cents, to be shown as fifty cents.

Amounts of seventy-five cents or greater, but less than one dollar, to be increased to one dollar.

Section 42.—Observance of differentials.

The McAdoo Order contains the following provision:—

“In establishing the freight rates herein ordered, while established rate groupings and fixed differentials are not required to be used, their use is desirable, if found practicable, even though certain rates may result which are lower or higher than would otherwise obtain.”

There is no objection to the adoption of this clause. As a matter of fact it merely applies to the scales as advanced, the practice usually followed in the preparation of schedules.

Section 43.

It should be pointed out that in the preparation of the schedule of increases in this report the provisions of Order in Council No. 1768 have been adhered to, and the directions to establish similar increases to those granted in adjacent United States territory have been complied with to the extent the Canadian rate system and conditions permit. In the result the previously existing parity of rates in Canadian and United States territory has been as near as may be preserved, and whenever under the former rate schedules Canadian railway rates have been on a lower rate basis lower rates in Canada have been maintained. In the general result it will be found that smaller increases will obtain in Canada than in the United States. Where it has been found impracticable to give the full increase allowed in United States territory under the McAdoo Order the matter has been fully discussed with the chief traffic officers of the companies chiefly concerned.

Section 44.

It is difficult accurately to forecast the increased gross earnings that the rate increases will give. It is much more difficult to arrive with any degree of accuracy at the result of the net. Traffic conditions and operating expenses constantly change. The authorities of the United States have gone into all the circumstances requiring and the added expenses necessitating a rate increase with much care. As a result of this study, in the opinion of those authorities, the so-called twenty-five per cent increase was necessary.

Increased costs and war conditions bear even more hardly upon railway conditions in Canada than in the United States. The Canadian railways themselves are large contributors to increased United States freight charges. Railway coal for Quebec, Ontario, and a considerable portion of the western prairies is imported from the coal mines of the United States and subject to long hauls by the American carrier.

The Grand Trunk Railway Company estimates that the additional amount its coal for the year will cost, owing to the increase of freight rates alone in United States territory, is approximately \$800,000; the Canadian Pacific \$900,000, and the Canadian Northern \$450,000.

A large percentage of other raw materials required by the railways in their operation are also imported from the United States. The Canadian railways not only pay the ordinary duty, but also a special war tax on their coal.

It is also clear that the increases authorized by the McAdoo Order, to the extent adopted by Order in Council No. P.C. 1768, will not give the Canadian railways the increases the United States lines receive under it. No increases are allowed on Canadian lines on passenger sleeping or parlour car tariffs.

It is also true that the increases on a large volume of the traffic will fall a considerable degree short of the 25 per cent increase popularly connected with the McAdoo Order, owing to the maximum limitation the order creates and the flat increases in other cases allowed.

The Order in Council was not passed for the purpose of increasing company profits over those of previous years, but for the purpose of meeting the advanced costs of transportation, of preventing strikes, and the collapse of the country's transportation.

The railway executives, while stating that the increases allowed will enable transportation to continue in efficiency, claim that such increases will not be sufficient to cover the whole increased cost of operation. Whether this will or will not be the case is largely a matter of speculation.

Under all the circumstances it is submitted that the Board be instructed to advise the Cabinet, through the Minister of Railways, month by month, the monthly net results of the operations of the three larger systems, i.e., the Grand Trunk, Canadian Pacific, and Canadian Northern, to the end that any increases that may be found to be unnecessary be promptly curtailed.

H. L. DRAYTON.

OTTAWA, July 25, 1918.

P.C. 1863.

AT THE GOVERNMENT HOUSE AT OTTAWA.

SATURDAY, the 27th day of July, 1918.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

His Excellency the Governor General in Council, on the recommendation of the Minister of Railways and Canals, made on the recommendation of the Board of Railway Commissioners, and under the authority of the War Measures Act, 1914, is pleased to order and enact and it is hereby ordered and enacted as follows:—

1. Notwithstanding the provisions of any legislation heretofore passed, or of any rate-limiting agreement heretofore made, the charges for the carriage of freight on all railways owned, operated or controlled by the Government of Canada, and all other railways subject to the jurisdiction of the Parliament of Canada, shall be increased to the extent and in the manner hereinafter set out, that is to say:—

TERRITORY EAST OF FORT WILLIAM.

Section 1.—Class Rates.

All class rates in eastern territory shall be increased twenty-five per cent.

Section 2.—Commodity Rates.

(a) Commodity rates on the following articles in carloads shall be increased by the amounts set opposite each:—

Commodities.	Increases.
Coal—	
Where rate is 0 to 49 cents per ton.	15 cents per net ton of 2,000 pounds.
Where rate is 50 to 99 cents per ton.	20 cents per net ton of 2,000 pounds.
Where rate is \$1.00 to \$1.99 per ton.	30 cents per net ton of 2,000 pounds.
Where rate is \$2.00 to \$2.99 per ton.	40 cents per net ton of 2,000 pounds.
Where rate is \$3.00 or higher per ton.	50 cents per net ton of 2,000 pounds.
Coke—	
Where rate is 0 to 49 cents per ton.	15 cents per net ton of 2,000 pounds.
Where rate is 50 to 99 cents per ton.	25 cents per net ton of 2,000 pounds.
Where rate is \$1 to \$1.99 per ton.	40 cents per net ton of 2,000 pounds.
Where rate is \$2 to \$2.99 per ton.	60 cents per net ton of 2,000 pounds.
Where rate is \$3 or higher per ton.	75 cents per net ton of 2,000 pounds.
Ores, iron.	30 cents per net ton of 2,000 lbs. except that no increase shall be made in rates on ex-lake ore that has paid increased all-rail rate before reaching lake vessel. The increase of 30 cents shall be added to tariffs in force prior to March 15, 1918, and the increases since allowed by the Board of Railway Commissioners struck out.
Stone, artificial and natural, building and monumental, except carved, lettered, polished or traced.	2 cents per 100 pounds.
Stone, broken, crushed and ground.	1 cent per 100 pounds.
Sand and gravel.	1 cent per 100 pounds.
Brick, except enamelled or glazed.	2 cents per 100 pounds.
Cement.	2 cents per 100 pounds.
Lime and plasters.	1½ cents per 100 pounds.
Lumber and other forest products not otherwise herein specifically dealt with.	A flat rate of 1 cent per 100 pounds to be added to the tariffs in force prior to March 15, 1918, and the rate so obtained to be then increased by 25 per cent but not exceeding 5 cents per 100 pounds; the increase since granted by the Board of Railway Commissioners to be disallowed.
Pulpwood.	25 per cent, but not exceeding an increase of 5 cents per 100 pounds.
Cordwood, slabs, and mill refuse, for fuel purposes.	1 cent per 100 pounds.
Wheat.	By striking out the limitation imposed of 2 cents per 100 pounds in the increase allowed by the Board of Railway Commissioners, effective March 15, 1918, and adding 25 per cent increase, but not exceeding 6 cents per 100 pounds.
Other grains, flour and other milled products.	To be increased to the new wheat rates.
Live Stock.	25 per cent, but not exceeding an increase of 7 cents per 100 pounds where rates are published per 100 pounds; or \$15 per standard 36 foot car where rates are published per car.
Packing-house products and fresh meats.	25 per cent.
Bullion, base (copper or lead), pig or slab, and other smelter products.	25 per cent.

Commodities.

Increases.

Sugar, syrup, and molasses.. . . .	By cancelling existing commodity rates and applying the fifth-class rate as increased hereunder.
Ice.. . . .	25 per cent calculated on tariff in effect prior to March 15, 1918. Increases since allowed by the Board of Railway Commissioners to be disallowed.

(b) Commodity rates not included in the foregoing list shall be increased 25 per cent.

(c) In applying the increases prescribed in this section, the increased class rates applicable to like commodity descriptions and minimum weights between the same points are not to be exceeded.

TERRITORY WEST OF FORT WILLIAM.

Class Rates.

(a) All class rates shall be increased 25 per cent, calculated on the tariffs in force prior to March 15, 1918; the increases since allowed by the Board of Railway Commissioners to be disallowed.

Commodities.

Increases.

Coal and coke.. . . .	Rates to be increased as rates on these commodities are increased hereunder in eastern territory.
Ores, iron.. . . .	Rates to be increased as rates on these commodities are increased hereunder in eastern territory.
Ores, other.. . . .	On ores not exceeding in value \$25 per net ton, 1 cent per 100 pounds; on ores valued over \$25 to \$50, 2 cents per 100 pounds; on ores valued over \$50 to \$100, the 10th class rates of the merchandise distributing scale, as increased hereunder, shall apply; on ores over \$100 in value the 10th class rates of the merchandise standard scale, as increased hereunder, shall apply.
Stone (artificial and natural), building and monumental, except carved, lettered, polished, or traced.. . . .	By the addition of 2 cents per 100 pounds to the tariff in force prior to March 15, 1918; the increases subsequently granted by the Board of Railway Commissioners to be disallowed.
Stone, broken, crushed, and ground; also sand and gravel.. . . .	By the addition of 1 cent per 100 pounds to tariffs in force prior to March 15, 1918; the increases since allowed by the Board of Railway Commissioners to be disallowed.
Brick, except enamelled or glazed.. . .	By the addition of 2 cents per 100 pounds to the tariffs in force prior to March 15, 1918; the increases since granted by the Board of Railway Commissioners to be disallowed.
Cement.. . . .	2 cents per 100 pounds.
Lime	1½ cents per 100 pounds on the tariffs in force prior to March 15, 1918; the increases since allowed by the Board of Railway Commissioners to be disallowed.
Lumber	25 per cent, but not exceeding an increase of 5 cents per 100 pounds.

TERRITORIES WEST OF FORT WILLIAM.—*Continued.*

Commodities.	Increases.
Grain and grain products to Fort William and Port Arthur.	By the addition of the increases granted under the McAdoo Order for similar mileages in adjacent American territory, to the rates in effect prior to March 15th, 1918. Where more than one tariff of an American carrier in an adjacent State exists, the rate increase shall be that allowed on the lowest normal rate for the same or similar mileages in such contiguous territory under the McAdoo Order; the increases since granted by the Board of Railway Commissioners to be disallowed. Provided that the rates on said products shall not be greater from the City of Edmonton than from the City of Calgary.
Grain and grain products between local points and to the Pacific Coast.	By the addition of 25 per cent, but not exceeding an increase of 6 cents per 100 pounds to tariffs in effect prior to March 15, 1918, and by disallowing the increases since made by the Board of Railway Commissioners.
Live Stock.	By the addition of 25 per cent, but not exceeding an increase of 7 cents per 100 pounds where rates are published per 100 pounds, or \$15 per standard 36-foot car where rates are published per car; increases to be based on tariffs in effect prior to March 15, 1918, and the increases since allowed by the Board of Railway Commissioners to be disallowed.
Packing-house products and fresh meats . .	By the addition of 25 per cent. to the tariffs in effect prior to March 15, 1918, and increases since allowed by the Board of Railway Commissioners to be disallowed.
Bullion, base (copper or lead), pig or slab, and other smelter products	Rates from British Columbia smelters to Toronto and Hamilton to take the rates from the contiguous American smelting and shipping point, namely, Northport, Wash., to Buffalo, viz., 71½ cents per 100 pounds, Montreal to take the New York rate of 81½ cents per 100 pounds. Rates to Canadian points, other than points in eastern Canadian territory, to be advanced 25 per cent. Rates on zinc for domestic consumption to be the same as on copper and lead.
Sugar, syrup, and molasses.	To be made on the basis and principle adopted hereunder for eastern territory.

(b) Commodity rates not included in the foregoing list shall be increased 25 per cent, calculated on the tariffs in force prior to March 15, 1918, and the increases since authorized by the Board of Railway Commissioners to be cancelled.

(c) In applying the increases prescribed in this section, the increased class rates applicable to like commodity descriptions and minimum weights between the same points are not to be exceeded.

TERRITORIES BOTH EAST AND WEST.

Minimum Charges.

(a) After the increases hereunder made in class rates, no rates shall be applied on any traffic moving under class rates lower than the amounts in cents per 100 pounds for the respective classes as follows:—

Classes	1	2	3	4	5	6	7	8	9	10
Rates	24	21	18	15	12	11	9	10	10	7½

(b) The minimum charges on less than carload shipments shall be as provided in the Canadian Freight Classification, but in no case shall the charge on a single shipment be less than fifty cents.

(c) Class rates.

Class rates between eastern and western points.....

Increases.

That portion of the rate applicable to eastern territory to be increased 25 per cent., and that portion applicable to western territory, 25 per cent., based on the rate in effect prior to March 15, 1918. The advances subsequently allowed by the Board in western territory shall be disallowed.

Commodity rates between eastern and western points.....

On that portion of the rate applicable to eastern territory, the appropriate increase granted hereunder for the commodity for local movements in eastern territory; and on the western portion, the appropriate increase granted hereunder for the commodity for local movement in western territory. The advances allowed by the Board of Railway Commissioners in western territory, effective March 15, 1918, shall be disallowed.

(d) Import rates.....

To be increased, subject, as a maximum, to the lowest rates obtaining from Baltimore or any North Atlantic Seaport in the United States to the same destinations, except that the rates from Halifax shall be increased so as to continue on the present relative basis.

(e) Disposition of Fractions.

In applying rates, fractions shall be disposed of as follows:—

(1) Rates in cents or in dollars and cents per 100 pounds or per package:

Fractions of less than $\frac{1}{4}$ or 0.25 to be omitted.

Fractions of $\frac{1}{4}$ or 0.25, or greater, but less than $\frac{3}{4}$ or 0.75, to be shown as one-half ($\frac{1}{2}$).

Fractions of $\frac{3}{4}$ or 0.75, or greater, to be increased to the next whole figure.

(2) Rates per ton:

Amounts of less than five cents to be omitted.

Amounts of five cents, or greater, but less than ten cents, to be increased to ten cents.

TERRITORIES BOTH EAST AND WEST.—*Continued.**(e) Disposition of Fractions.—Continued.*

(3) Rates per car:

Amounts of less than twenty-five cents to be omitted.

Amounts of twenty-five cents, or greater, but less than seventy-five cents, to be shown as fifty cents.

Amounts of seventy-five cents, or greater, but less than one dollar, to be increased to one dollar.

(f) Observance of Differentials.

In establishing the freight rates herein ordered, while established rate groupings and fixed differentials are not required to be used, their use is desirable, if found practicable, even though certain rates may result which are lower or higher than would otherwise obtain.

(g) All schedules, viz., tariffs and supplements, published under the provisions of this Order shall bear on the title-page the following, in bold-face type:—

This schedule is published and filed on one day's notice with the Board of Railway Commissioners for Canada, pursuant to Order in Council No.

The Board of Railway Commissioners shall obtain from the three larger railway systems, that is to say, the Grand Trunk, Canadian Pacific and Canadian Northern Railway Companies, the results of railway operation per month, and report on the same monthly to His Excellency in Council, through the Minister of Railways and Canals, to the end that should the earnings of the said companies under this order be greater than the sum required to meet increased costs and permit transportation to be properly and efficiently carried on, the appropriate reduction in the rates fixed hereunder shall be made. The said reports and the books, accounts and records upon which the same are based shall be subject to examination and audit by the Government of Canada, under such regulations as may hereafter be prescribed by the Governor in Council.

The provisions herein, the rates herein prescribed shall be effective, if filed with the Board of Railway Commissioners, as and from the first day of August, 1918, and shall remain in force for the duration of the present war and until further ordered, subject to the provisions of the section next preceding. Increase of rates may become effective after the twelfth day of August, 1918, and as and when filed.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. VIII

Ottawa, August 15, 1918

No. 11

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Application of Edmonton Board of Trade for the appointment of a station agent at Legal, on the Canadian Northern Railway.

Heard at Edmonton, Alta., June 11, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

The necessity of the appointment of an agent at Legal, on the Canadian Northern Railway, was before the Board on a previous occasion, and on the representation of the company that a caretaker would be appointed the matter was allowed to remain in abeyance.

It is now again brought to the attention of the Board by the Edmonton Board of Trade. It is contended that members of that board who ship to Legal have suffered considerable inconvenience and loss because of the lack of an agent to take charge of consignments to that station. The village of Legal is two miles distant from the station.

In accordance with Order No. 26362, of this Board, dated June 24, 1917, the company have built a standard fourth-class station at Legal, which contains suitable rooms for a resident agent. That Order further provided that the said station agent was to be, "for the present and until further Order of the Board, in charge of a caretaker whose duties shall be to keep the station clean and heated for the accommodation of the passengers and take care of L.C.L. freight and express matter."

The applicant contended at the hearing, and the contention was not denied, that there was no caretaker in charge of the station.

The revenue of the company at Legal has exceeded \$15,000 a year for the past several years. I think an agent should be maintained by the company at Legal. An Order should go that an agent be appointed on or before the first of September next.

OTTAWA, July 17, 1918.

MR. COMMISSIONER BOYCE:

Under present abnormal conditions I think that there are no particularly pressing reasons for the appointment of a permanent agent at Legal. True, inconvenience results from there being no agent, but who does not suffer inconvenience, cheerfully, in every walk of life, in these days of world-wide upheaval, industrial and commercial chaos and suffering? It has been made apparent to the Board, on several occasions, that it is well nigh impossible for railways to obtain agents to man stations, much

more important than Legal. The railway company should not be asked to do impossible things. I think it would be futile to order the company to instal an agent here. It could not do so without depriving a more important station of adequate service.

Under normal conditions I would concur in the Assistant Chief Commissioner's opinion. The present conditions render it imperative that such Orders be not made except in very urgent cases—much more urgent than the present.

There is a caretaker at this station, appointed on March 7, 1916, who should be able to take care of the station, but the complaint is (evidence, vol. 283, page 1488) that the caretaker has not been discharging his duty. That is a matter that can be regulated. The station never has had an agent, and there is not such a crying necessity for one as will justify us, under present conditions, in ordering the appointment of one.

I would, therefore, constrained by these unusual conditions, and the practical futility of such an Order, as is proposed, allow matters to remain as they are, relying upon the people at Legal to cheerfully (for the present as in the past) suffer the inconvenience spoken of, rather than impose burdens elsewhere where they can less easily be borne.

I would, for the present, dismiss the application.

OTTAWA, July 24, 1918.

COMMISSIONER GOODEVE:

I agree with the conclusions arrived at in Mr. Commissioner Boyce's judgment, subject to the condition that the railway company undertake to have its caretaker properly fulfil his duties as required under Board's Order No. 26362. See my memorandum of December 27, 1917.

Application of the Canadian Government Railways for approval of plans showing diversion of highway at what is known as "Cesale's" and "Auld's Cove" crossings, mileage 119.05 and mileage 119.73 Mulgrave subdivision.

File No. 28457.

JUDGMENT.

THE CHIEF COMMISSIONER:

By agreement between the parties interested, that is, the municipality, the Department of Works and Mines of Nova Scotia, and the Canadian Government Railways, the matter of the abolition of two highway crossings on the Intercolonial Railway, known as "Cesale's" and "Auld's Cove" crossings, has been referred to the Board.

We have inspected the crossings; they are dangerous and their elimination by a diverted highway is in the interests of everybody.

The road which will be diverted is of little or no value. On inspection it shows that practically no work has been done on it. Its real value consists merely of the land on which it is built.

At the hearing the representative of the municipality was not present, but Mr. Yorston, who appeared for the province, was advised that the farms on both sides of the tracks belonged to the same owner. If this is the case, there should be no difficulty whatever in exchanging with the owner the site of the old highway for the projected new one on the south side of the tracks.

The arrangement, therefore, made between the parties, that is, that these crossings be done away with, is a very proper arrangement, the only question which was really left for the consideration of the Board was as to the share which the parties should contribute to the cost.

The cost cannot be very great. The land to be acquired, in case the exchange cannot be made, cannot be described as of much value, and there is such a little amount of work done on the present highway that it will take but the expenditure of a very small sum to produce to the south a highway which will be just as travelling as that to the north and not subject to the burden of two dangerous crossings.

The estimate of the railroad engineer amounts to \$1,300. The estimate of the provincial authorities is much higher, and it is apparently intended not merely to cover the cost of a substituted highway of the same character as the highway it is proposed to close, but to construct a road proper for vehicular purposes, which the present highway certainly is not.

It goes without saying that the Canadian Government Railways ought not to bear any part of the expense which would represent a road betterment rather than the cost incident to the closing of these dangerous crossings. Undoubtedly the danger of the crossings is increased somewhat by the railway grade. It is, however, also increased by the condition of the highway and the grades which exist on it. The cost of the work may be materially decreased, as I see it, if the local authorities conduct the negotiations for the land and the railway staff does the necessary work of grading and filling. The railway can obtain with little cost a considerable amount of fill from the site of the former wye which has been renewed and on which there is a good deal of material of no value in its present position.

Both interests are benefited in the extinction of the crossings; but I would apply the rule usually followed by the Board and place the greater burden of the cost on the railway, and direct that two-thirds of the cost be paid by the Government Railway System and one-third by the local authorities.

If any question arises as to what portion of the expense represents a road betterment rather than the cost incident to the closing of the crossings concerned, the matter may, if the parties so agree, be referred to the Chief Engineer of the Board for settlement.

July 18, 1918.

Mr. Commissioner McLean concurred.

Application of the Beverly Coal Mine Company for the right to use a branch line of railway leading to the Humberstone Coal Company's mines, near Edmonton, Alta.

File 19653-1.

Heard at Edmonton, Alta., June 11, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

By Order No. 22850, dated 10th November, 1914, this Board on the application of the Grand Trunk Pacific Railway Company, under section 222 of the Railway Act, authorized that company to construct, maintain, and operate a branch line to the property of the Humberstone Coal Company, distant about a mile from the main line of the Grand Trunk Pacific Railway Company, east of Edmonton.

The branch line was in due course constructed and is still being operated by the railway company pursuant to that order. The Beverly Coal Company has applied to the Board, under section 226 of the Railway Act, for an order directing the Grand Trunk Pacific Railway Company to construct and operate a spur or branch line from

a point on the branch line leading to the Humberstone mine, about half a mile from the company's main line, to a coal mine on the property of the applicant some distance west of the branch line leading to the Humberstone mine.

Counsel for the Humberstone Coal Company objected to the application, on the ground that the branch line to the Humberstone property was not part of the railway of the Grand Trunk Pacific Railway Company, but was the property of the Humberstone Company, and that, therefore, this Board had no jurisdiction to grant the order applied for. Counsel for the Humberstone Company further submitted that if the Board being satisfied that it had jurisdiction granted the application, that the Humberstone Company should be remunerated for the use of the Humberstone spur by the applicant.

An agreement was entered into between the Grand Trunk Pacific Railway Company and William Humberstone, dated 1st September, 1914, providing for the construction of the Humberstone spur. That agreement was not before the Board when the order authorizing the construction of the Humberstone spur was issued, and no reference to it was made in the order.

In the agreement, which is on the company's standard printed form, Mr. Humberstone is called the owner. The following clauses of the agreement are worthy of consideration in connection with this matter:—

(4) The owner will pay to the company the cost of the siding as certified to by the General Superintendent, the company excepting therefrom the cost of rails, fastenings, spikes and switch materials which the company will furnish, retaining, however, the ownership therein.

(8) The times and manner of using the siding shall be regulated by the officials of the company: provided always that their control shall not interrupt the proper use of siding for the business of the owner.

(9) (a) The company shall at all times during the continuance of this agreement have the use of the siding in so far as it shall not be required for the use of the owner;

(b) The company may, upon reasonable compensation to the owner (the amount to be fixed by the railway company in case of dispute) permit the use of the siding by other parties (provided such use shall not interfere with the proper use of the siding for the business of the owner).

(c) The company may connect the siding, or cross the same with any other siding, and use the siding as an approach to or continuation of any other siding.

(16) Either party may terminate this agreement, at any time upon giving to the other party notice in writing of the intention to do so, and naming in such notice a day at least two months distant on which the agreement is to terminate; on the day so named, this agreement shall terminate; and thereafter the owner shall not have the right to use the siding or to pass upon the property of the company upon which any part of the siding is laid; and if it be terminated by a notice as aforesaid during any year for which rental has been paid, then the company shall repay the proper proportion of such rental.

Since the hearing at the sittings of the Board in Edmonton, counsel for the applicant and for the Humberstone Company have each put in a submission in writing. Counsel for the latter company lays most stress on his contention that the Board has no jurisdiction to grant the order applied for, because the Humberstone spur is not part of the railway of the Grand Trunk Pacific Railway Company. He relies upon *Blackwood's Limited vs. C.N.R.*, 44 Supreme Court Reports, page 92, and *Clover Bar Coal Company vs. Humberstone*, 45 Supreme Court Reports, 346. In my opinion neither of these cases are applicable, because in neither case was the piece of the railway in question authorized by order of this Board. In both cases the railway was constructed under an agreement between the owners of an industry and a railway

company. A stronger case in support of the contention of counsel for the Humberstone Company that the Board has no jurisdiction to grant the order applied for is, *Roland vs. Grand Trunk*, 18 C. R. C., page 60, in which the Chief Commissioner decided that a branch line built under an order of this Board, under section 222 of the Railway Act, was not part of the railway where it was built pursuant to an agreement and the order authorizing the construction of the spur was made subject to the terms and conditions of the agreement. In my opinion the present case is not similar to any of the three quoted, because the spur in question was built on the authorization of this Board without reference to any agreement between the owners of the industry to be served and the railway company.

Section 221 of the Railway Act authorizes the company to construct, maintain, and operate branch lines; and section 222 says that, the branch line shall not be commenced until certain steps have been taken by the railway company in the way of filing plans, etc. These steps were taken by the Grand Trunk Pacific, and the Board after being satisfied that the branch line was necessary in the public interest, authorized its construction pursuant to section 223 of the Railway Act.

In view of these facts, to my mind it is quite clear that the Humberstone spur is part of the railway of the Grand Trunk Pacific Railway Company, and that this Board has jurisdiction to grant the Order applied for.

Bearing in mind the provisions of the agreement between the railway company and Mr. Humberstone, by which, of course, this Board is not in any way bound, I think it would be reasonable that some compensation should be granted Mr. Humberstone for the use of the portion of the spur lying between the railway company's main line and the point where the applicant desires its spur to branch off. We were told that this piece of track is about half a mile in length—i.e. about one-half of the entire length of the Humberstone spur. We were not given very definite evidence on the cost of the spur. In his written submission, counsel for the Humberstone Company says that his client pays the Grand Trunk \$282.15 per annum, apart from any switching rates, as a rental for the use of the rails, spikes, fastenings, and switch materials in the spur, and that from Mr. Humberstone's books the cost of the whole siding to him had been upwards of \$45,000. This amount he says, doubtless includes a diversion of the line south of the portion the applicant desires to use.

From an examination of the plan and profile of the Humberstone spur and the consideration of what has been submitted by both parties, I am advised by one of the Board's engineers that a fair valuation of the portion of the Humberstone spur, which the applicant desires to use, would be \$7,719. Eight per cent is a fair rate of interest to be paid for money in Alberta at present, and I think eight per cent on the \$7,719 would be a fair amount to be paid by the applicant to the Humberstone Company for the applicant's joint use of the portion of the Humberstone spur in question.

As far as the maintenance of the portion of the spur in question is concerned, the applicant should contribute to it on a wheelage basis.

I think an order should go accordingly.

OTTAWA, July 23, 1918.

COMMISSIONER BOYCE:

The applicants at the Edmonton sitting, on notice to, and in presence of, counsel for the railway company and William Humberstone, asked the Board to make an order giving them the use, for the purposes of their coal mining industry at Beverly, of a portion of the spur track (or as it is sometimes called) branch line, from the Humberstone Mine to the junction with the main line of the Grand Trunk Pacific Railway—the spur track (or branch line) referred to being about one mile in length.

The railway company was not unfavourable to such an order being made, and at the hearing, and subsequently by written submissions, contended that where a siding is already constructed, and can be used to advantage, it would be improper to

put applicants and the railway company to the expense of operating a new and special siding to specially serve the applicant, a contention not without some merit, but subject to the rights of other parties interested.

The respondent, William Humberstone, at the hearing, and subsequently, by written submissions, objected strenuously to the order being made, and challenged the jurisdiction of the Board to make it.

The facts now before the Board are as follows:—

William Humberstone and the Grand Trunk Pacific Railway Company entered into an agreement, dated 1st September, 1914, and filed upon the hearing of this application, providing for the construction of the siding (or branch line, if it may be so called) from the mine to the main line of the railway. Whatever steps were taken to give, or endeavour to give, to the situation any other and perhaps extended or higher application, there can be no doubt whatever that the agreement alone was the basis upon which the connecting track between the Humberstone Mine and the main line of the Grand Trunk Pacific Railway was to be constructed and upon, and subject to the terms of which, and to the respective and relative rights of the parties under it, the connecting line was built. It was intended to be, it was, and it is, an industrial track, serving a private industrial concern, and creating and conserving private rights to the owners of the industry whose private interests were to be served by it. As much may turn upon this agreement it may not be amiss to epitomize its terms. It recites that the owner (Humberstone) is the occupant of the northwest quarter of lot 7, township 53, range 24, west 4th meridian (shown on plan) "and desires having a siding built connecting the said premises with the railway, and the company is willing to construct such siding on the terms and conditions herein expressed."

It provides: (a) That the company *"at the request and at the expense of the owner"* (Humberstone), and *subject to the approval of this Board*, construct the siding as per plan; (b) that the owner will pay the cost of the siding, except rails, fastenings, spikes, and switch materials which the company furnishes, but of which it retains ownership; (c) the owner is to pay a compensation or rental to the railway for the use of the rails, etc., use of which is furnished by the company, \$262.15, per annum, and also pay the expenses of necessary signals, signalmen, protection, appliances and other similar expenses at any time incurred by reason of the user of the siding by the owner, and also pay to the railway all costs and expenses which may be incurred by the company in maintaining and keeping the siding in good repair and condition and open for traffic; (d) subject to the proper use of the siding by the owner the time and manner of using it shall be regulated by the company; (e) the company to have the use of the siding at all times, in so far as it shall not be required by the owner, and the company may, upon reasonable compensation to the owner, permit the use of the siding by other parties, provided such use shall not interfere with its use by the owner, and may connect or cross the siding with any other siding and use it as an approach to or continuation of any other siding; (f) the owner is to protect the railway of the company as to cattle, indemnify the company from all claims for injury to persons or property arising out of any negligence or omission on owners part in operation or maintenance of the siding and assumes all risk of loss or damage by fire to buildings or property on the lands and premises, *the owner acknowledging that it is at his invitation that the company agrees to permit its locomotive engines to operate upon the siding*, and that this provision is one of the chief considerations moving the company to enter into the agreement; (g) *the owner, at his own cost, is to provide the right of way for siding outside of the land of the company*; (h) *the owner to pay all taxes and assessments of every kind, and to keep the right of way of the siding free from combustible matter and obstructions*; (i) that there shall be no assignment without leave; (j) that on default of payment of rent and maintenance, or observing of accounts for two months, the company may in specified manner discontinue operation of the siding, and may, in certain events, remove the siding from its property and

terminate the agreement. Either party may terminate the agreement *at any time*, on specified notice to the other; and (k) that on the termination of the agreement materials furnished and work done on the portion of the siding on the land of the company, becomes the property of the company absolutely, and the company shall remove from all other portions of siding, rails, fastenings, spikes, and switch materials.

Such is the agreement which originated this siding, and subject to the conditions of which it was constructed, and is maintained and operated.

Humberstone paid for the right of way for the siding, and for perishable cost, or original siding (\$7,008.43) and of additional or substituted siding (\$4,078.82). His total expenditure in cost being some \$45,000. The non-perishable material cost, borne by the railway, was fixed at \$4,702.58, on which sum the Humberstones pay a rental of 6 per cent, or \$282.15 per annum.

It is stated, and not denied, that the owner, William Humberstone, has leased the mine to an independent company, and has granted to that company the exclusive use of the entire length of the siding. As the railway company makes no reply to this statement, it can fairly be assumed that the transmission of interest took place with its consent, necessary under the agreement.

The Board, by its order No. 22850, dated 10th November, 1914, reciting the approval of the Humberstone Coal Company, and Trowley and Ketchum, property owners affected, dispensed with the publication of notice and authorized the construction of the branch line or spur as was contemplated by the said agreement. There was correspondence both before and after the Order, which is on file, indicating that the Humberstones, and not the railway company, were in reality purchasing the right of way for and building the spur. For instance, on 2nd December, 1912, the solicitor of the Railway Company writes: "In the matter of order of the Board, No. 17827, (subsequently rescinded by order No. 22850) directing the construction of spur to serve the Humberstone Coal Company, I beg to hand you herewith application on behalf of the Grand Trunk Pacific Railway Company under sections 222 and 237 of the Railway Act, for an order authorizing, etc," and adds: *and approval seems necessary in order to enable expropriation of a small piece of right of way which the Coal Company seems unable to secure without such procedure.*" The natural meaning to be gathered from the expressions underlined was that the railway company was applying in place of and for the benefit of the private owners, as was undoubtedly the case, as the subsequent agreement of 1st September, 1914, abundantly shows. To the same effect was the letter of the solicitor for the railway company to the Board, dated 14th December, 1912, asking for an extension of time for construction under the Order then in force, providing for the construction of the spur according to a plan which was, however, changed for the one authorized by order 22850, of 10th November, 1914. In that letter the solicitor for the railway states that "*the Humberstone Coal Company has so far been unable to construct grade*, and I shall, therefore, be obliged if 'when plan of spur is approved, an extension of time for completion can be extended until 30th May, 1913.'" A clear intimation to the Board that the Humberstone Company, and not the Railway Company, was constructing the spur line, as was undoubtedly the case.

Whatever, therefore, is the effect of the order No. 22850, of 10th November, 1914, authorizing the construction of this spur—or branch line—the ownership of it and rights over it were determined by and rested upon the agreement I have referred to, and not by the order. It was built as a private spur for, and under agreement with, the Humberstone people, they paid for it, they maintained it, paid rent and other onerous charges in connection with its maintenance as a private spur—and having paid for its construction, and for the lands acquired for it, to the amount of some \$45,000, they have acquired, by agreement with the railway company, rights of ownership and proprietary interests in, and with respect to it, which prevent the railway company from professing that this spur is part of its line of railway or of its railway system.

The order (No. 22850) authorizing its construction, is invoked by counsel for the applicant as creating this spur—built and paid for privately, under a private agreement with the owners of the industry to be served by it—into a branch line of the railway—a part of the railway—thus giving the Board a jurisdiction over it which it otherwise would not possess. Certainly the railway company cannot contend that it is a branch line or part of its line of railway. If it attempted to so contend, it would be estopped by the agreement to which it was a party.

Then, what is the effect of the order of the Board referred to? Is it sought thereby to disguise a privately built and privately owned spur as a branch line of the railway, and so give this Board the power, if it chose to exercise it, of violating the rights of property and domain of individuals and corporations in the lands, property, and easements represented by its construction and maintenance and guaranteed by the railway company under its agreement? Certainly the railway company makes no such contention. It made it reasonably clear, in its correspondence with the Board, that the authority asked of the Board was for the purpose of a private siding—not a branch line.

If this Board has any jurisdiction to grant this application it would be upon the fiction or illusion that the spur, or siding, was a branch line and, therefore, part of the railway. But this spur is not part of the railway. It was built, right of way purchased, and is maintained by private ownership, and the ownership of its right of way is not in the railway but in Humberstone who—or his successors can, upon notice, compel the railway company to take up the tracks, signals, switches, and equipment and destroy its existence as a railway line—he or they retaining the ownership, as of right of purchase, of the land upon which it is built. What does it profit then to call a branch line that which is clearly in fact but a private spur track? The illusion is colourless. The fiction is threadbare. The track is no part of the railway, and the order of the Board cannot, in the circumstances, make it so. To declare it a part of the railway would be to grossly invade and violate private rights. If the order of the Board purporting to call this spur a branch line could be utilized for such a purpose, this Board had no power to make such an order. But I think all that was asked of and all that was intended to be given by the Board, was an approval of the spur line as contemplated by clause 3 of the agreement for its construction.

I fail to see that decisions in *Blackwoods Limited v. C.N.R. Co.* 44, S.C.R., p. 92, and the *Clover Bar Coal Co. v. William Humberstone*, 44 S.C.R., p. 346, are inapplicable here. I think they are distinctly applicable and must be followed.

The Assistant Chief Commissioner is of opinion that neither the above cases, nor that of *Boland v. G.T.R.*, 18 C.R.C., p. 60, are applicable to the present case. The fact that in this case, as in the latter case, the spur was, in fact, built pursuant to an agreement, now before us, and plainly indicated in the applications of the railway company to the Board, identifies this case closely and undistinguishably with the principles there laid down. To the same effect is his judgment, concurred in by Commissioner Goodeve in *Kammerer v. C.P.R.*, C.R.C. 21, p. 74. The Assistant Chief Commissioner suggests that because the order of the Board was not expressly made subject to the terms of the agreement then in force, the line in question became part of the railway of the Grand Trunk Pacific and as such subject to the jurisdiction of the Board. The answer to that suggestion or opinion, of course, is that the order of the Board was, in fact, subject to and the application for it was based upon, and in furtherance of, the agreement, and not in the public interest, and the Board dispensed with otherwise necessary formalities precedent to the application because no public interests were involved and the private interests (the Humberstones) consented, and so recited in its order.

I think it would be a grave interference with the undisputed private rights of the Humberstones under the agreement to give effect to such a contention. Those rights are plainly before the Board upon this application and whether the Order protects or ignores them in its wording, they are now insisted upon, and I hold the view that

they are entitled to respect, and that, respecting them, we must yield to the argument that we have no jurisdiction to violate them.

Even if in the circumstances, we were bound by the letter of the Order, I would be disinclined, in the face of the facts now before us, and in existence when the Order was made, to exercise the discretion resting with us, to encroach upon the private rights created by the agreement. We are plainly confronted with the fact, evidenced by a written agreement, that what the Board purported to treat as a branch line for a specific named purpose was, in fact, only a private spur, and I think that we would be unwise to make the Order asked in the face of objection by the private owner.

Let us suppose that the Order suggested by the Assistant Chief Commissioner were made, and that, under it, the applicant built its siding and connected it with that of the Humberstones constructed under the agreement with the railway company. The agreement would not be extinguished. The rights of the parties as recited would not be affected quod the spur, and one of them authorizes either party, at will, on short notice to terminate the agreement and abolish the connection with the railways main line—the ownership of the land remaining where it now is, with the Humberstones who bought and paid for it. The effect would be that the Order of the Board would be subject to rights of private parties as defined by a contract before the Board when making its Order, and the exercise of those rights would render the Board's Order useless. The situation would then be similar to that stated by Anglin J. in *Clover Bar Coal Company v. Humberstone*, 45 S.C.R. at p. 351, (cited in the written argument of counsel for Humberstone, p. 9).

I think it is also clear that there is no power under the Act for this Board to settle compensation or fix terms as suggested by the Assistant Chief Commissioner. Were such an Order made an anomalous and complicated situation would be created.

It is urged that the applicants have no operating mine and that their difficulties are such that they cannot expect to have one, and that it would be impracticable and useless to construct this spur—a further reason for allowing them to establish, as did the Humberstones, their own connections with the railway if, and when, their business justified it.

I would dismiss the application.

OTTAWA, July 31, 1918.

COMMISSIONER McLEAN: I am unable to distinguish what is involved in the present application from the principle as laid down by the Board in *Boland v. Grand Trunk Ry. Co.*

August 8, 1918.

Complaint against the charge of \$3 per car by the C.P.R. for handling cars on Canyon City Lumber Company spar for consignees other than the complainant.

File 14880.

Heard at Calgary, Alta., June 10, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

The Canyon City Lumber Company of Creston, B.C., has a spur line, built under the usual branch line agreement, to a loading platform near the complainant's property at Canyon. The line is 819 feet long, with a spur off it 757 feet long. Both the branch line and the spur are entirely on C.P.R. right-of-way. They cost the complainant nearly \$7,000 to construct, and the complainant pays the railway company a rental of \$76.90 per year, which is 7 per cent on \$1,098.56, the value of the rails, fastenings, switches, etc., put in by the railway company.

The railway company have been using these branch lines for the shippers, at Canyon City other than the complainant. The railway company's nearest public siding to Canyon City is at Erickson, about one and one-half miles distant. As there is not a good highway between Canyon City and Erickson, it is not convenient for the Canyon City people to use the Erickson siding.

After the railway company commenced using the complainant's branch lines at Canyon City for shippers or consignees other than the complainant, the complainant submitted that as it had paid for the construction of these spurs, that it should receive some compensation from the company for each carload that went over the Canyon City spurs. Originally, the complainant wished to charge \$5 per car as a suitable rate to be paid by the railway company for all carload movements over the spurs to or from parties other than the complainant, but the Board, after considering the matter, determined that a \$3 rate was a more equitable charge to pay the complainant.

Since that time the railway company has been paying the Canyon City Lumber Company \$3 per car for each car handled over the spurs in question. The railway company ultimately filed a tariff showing this rate of \$3 and collecting it from consignees of cars over the spurs in question. The complainant now says that that \$3 should be paid by the railway company out of its own treasury and not collected from a Canyon City consignee.

The carload movement to which this rate would apply is light. Last year it amounted to from 10 to 15 cars. It is of substantial benefit to the parties who pay this \$3 to have their shipments brought in on the Canyon City spurs. It is worth \$3 to these people to have this service, or they would have their shipments delivered at Erickson. Therefore, I cannot see why they should not pay it, nor can I see what concern it is of the complainant who should have to pay \$3 so long as the complainant receives it. It seems to me the present arrangement is an equitable one and that the railway company is justified in making the charge it does.

The application should be dismissed.

OTTAWA, July 30, 1918.

Mr. Commissioner Boyce concurred.

ORDER No. 27535.

In the matter of the application of the Canyon City Lumber Company, of Creston, B.C., hereinafter called the "applicant company," for an order disallowing the the charge of \$3 per car made by the Canadian Pacific Railway Company for handling on the applicant company's spur carload freight other than that consigned to or shipped by the applicant company.

File No. 14880.

FRIDAY, the 2nd day of August, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Calgary, June 10, 1918, in the presence of counsel for the applicant company, and the railway company, and what was alleged, and upon reading the further submissions filed,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

Application of the Brotherhood of Locomotive Engineers for an Order directing that all switch and transfer engines be equipped with wedge tanks, low enough for enginemen to see over, and with a headlight on the rear.

File 28496.

Heard at Ottawa, Ont., May 7, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

A number of railway companies under the jurisdiction of the Board have switching engines equipped with a sloping tender so that the engineer when backing the engine can see a man whose duty it would be to couple the engine to a car. This would, doubtless, lead to the prevention of an accident where the tender is being coupled to a car, but in many cases of shunting, the car which is being attached or separated from the train, is not next the engine, but some distance away from it. In such a case where there is a box car between the man on the ground and the engineer, the box car obstructs the view and the sloping tender is of no avail. Some railway officials object to sloping tenders, because the capacity of the tender for carrying coal and water must be curtailed.

The operating department of the Board reports, that in so far as equipping the rear of tenders with headlights is concerned, that as a matter of fact nearly all the switchers now in use are so equipped. A headlight on the rear end of a tender would, of course, be obstructed by a box car attached to the tender, as the view of the engineer would be obstructed by a box car as I have already mentioned.

It is apparent that the changes asked for would have some advantages and some disadvantages, but it does not appear to me that the sloping tender or the rear headlight would be sufficiently important in the lessening of the occurrence of accidents to warrant this Board in putting the railway companies to the expense of equipping their shunting and switching engines accordingly. The present time is quite inopportune, when the resources of railway companies are being taxed to the utmost by war necessities and material and labour are so difficult and expensive to obtain, to place any such burden upon the railway companies.

As I have already pointed out, some of the railway companies have already many shunting engines equipped in the way the applicants desire. The companies are, of course, free to continue arranging for such equipment if they so desire. I do not think the Board should order them to do so.

The application should be dismissed.

The Deputy Chief Commissioner and Mr. Commissioner Boyce concurred.

MR. COMMISSIONER MCLEAN: Independently of the question of expense a case for the order asked for has not been made out.

OTTAWA, July 31, 1918.

Application of the Similkameen Farmers' Institute, Keremeos, B.C., for better connections and joint freight rates on fruit and vegetables, over the Great Northern and Canadian Pacific Railways, Similkameen District, to points in Alberta and Saskatchewan.

File 25451.

Heard at Winnipeg, Man., June 14, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

The Similkameen valley in the southwestern part of British Columbia is one of the most prolific fruit and vegetable sections of that province. It is served by the Great Northern Railway. The complainants ship their fruit from Keremeos and adjacent points to the provinces of Alberta and Saskatchewan, via the Great Northern. At present, the railway company carries the shipments southerly on its line in the State of Washington to Wenatchee, thence easterly on its main line through Spokane, hundreds of miles to a point on the international boundary line, called North Gate, where a connection is made with the Grand Trunk Pacific Railway Company. North Gate is considerably east of Regina, so that all shipments of fruit from the complainants' district to Alberta and Saskatchewan points has a very long back haul. The result is, that notwithstanding the fast freight service easterly which the Great Northern Company claims it has, considerable deterioration takes place in the fruit and vegetables before they reach their destination.

The complainants ask for a shorter route and a lower rate. They suggest that the route should be via C. P. R. from Princeton, or C. N. R. from Hope; or, failing either of those, via C. P. R. from Nelson. The first two suggestions would give the Great Northern the route upon which the shipments originate a very short haul, and it would hardly be expected that the railway company should supply refrigerator cars for that movement. In addition to this, the train service on either of these routes is not very satisfactory. A route via Nelson would give the originating railway less than 300 miles haul and would be against a two and six-tenths grade. At Nelson the movement will have to go by car ferry to Kootenay Landing, which would mean more delay.

After consultation with the Operating Department of the Board I have come to the conclusion that the proper routing for the complainants' fruit and vegetables to Alberta and Saskatchewan points to, and including Moosejaw, should be via Sweet Grass, on the Great Northern, and Coutts, on the Canadian Pacific. That would give the movement the benefit of the Great Northern fast fruit service to Virden, and a satisfactory service could doubtless be arranged from Virden, north to Lethbridge and Calgary. At present there is a daily passenger service between Spokane on the Great Northern and Calgary, via Virden, Sweet Grass and Coutts, and there is also a local freight service from Virden northerly. At present the Great Northern do not show rates in their tariff via the route I now suggest from British Columbia fruit points to Alberta and Saskatchewan points. As already stated, the company's route at present is via North Gate. The rates to Alberta and Saskatchewan points are found in Supplement 29, Great Northern Tariff, C.R.C. No. 1121. The following are some of the rates from Keremeos:—

To Edmonton—	
Fresh fruit	\$1 41
Apples	1 09½
To Calgary—	
Fresh fruit	\$1 29½
Apples	0 98
To Moosejaw—	
Fresh fruit	1 44
Apples	0 98

These rates cover a very long haul easterly on the Great Northern and a long haul westerly and northerly on the Great Trunk Pacific.

The railways should file tariffs showing rates via the route suggested, which will have a much shorter mileage than the route via North Gate.

In my opinion an Order should go, directing the Great Northern to route the movement of fruit and vegetables in question, via Sweet Grass, and to that company and the Canadian Pacific Railway to file, with as little delay as possible, tariffs showing rates from the Similkameen valley to Alberta and Saskatchewan points, as far east as Moosejaw via the routing suggested.

OTTAWA, July 31, 1918.

Mr. Commissioner Boyce concurred.

ORDER No. 27536.

In the matter of the application of the Similkameen Farmers' Institute, of Keremeos, B.C., hereinafter called the "applicant," for better connection and joint freight rates on fruit and vegetables over the Great Northern and Canadian Pacific Railways, in the Similkameen district, to points in Alberta and Saskatchewan.

File No. 25451.

FRIDAY, the 2nd day of August, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, June 15, 1918, in the presence of counsel for the railway companies, no one appearing for the applicant, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the applicant's shipments of fruit and vegetables to points in Alberta and Saskatchewan to and including Moosejaw be moved via Sweet Grass, on the Great Northern Railway, and Coutts, on the Canadian Pacific Railway; the Canadian Pacific and Great Northern Railway Companies forthwith to file tariffs showing the rates from the Similkameen Valley to Alberta and Saskatchewan points as far east as Moosejaw via the routing suggested.

D'ARCY SCOTT,
Assistant Chief Commissioner.

Application of the Fort Frances Pulp and Paper Company, for an Order compelling the Grand Trunk and Canadian Northern Railway Companies to re-establish joint commodity rates on wood-pulp from Bromptonville, P.Q., to Fort Frances, Ont.

File 26901.8.

JUDGMENT.

Heard at Fort Frances, Ont., June 18, 1918.

THE ASSISTANT CHIEF COMMISSIONER:

The applicant has large pulp and paper mills at Fort Frances. It manufactures its own ground wood, one of the ingredients in newsprint, but owing to the increased demand for newsprint for newspapers published in Eastern Canada and to a lessening in its supply of pulpwood on account of low water in the Rainy river, the company was compelled to buy wood-pulp from some eastern mills.

Effective December 19, 1917, a special joint commodity rate from Bromptonville, P.Q., to Fort Frances, of 22 cents per 100 pounds, was arranged between the railways interested. See G.T.R. Tariff, Supplement 7 to C.R.C. No. E-3483. By the 15 per cent increase in all rates, which became effective on the 15th March last, the 22 cent rate became 25½ cents. This rate was taken out on the 8th May last and there being no special rate available the wood-pulp moved under the 10th-class of 49 cents.

The distance from Bromptonville to Fort Frances is 1,393 miles. At the hearing the Canadian Northern Railway Company undertook to endeavour to secure the establishment of a 28-cent rate, which would give the railways a gross revenue of four-tenths of a cent per ton per mile from Bromptonville to Fort Frances.

After allowing this matter to remain in abeyance, with the expectation that some agreement would be arrived at, we have now been advised that the 28-cent rate is not agreeable to the Grand Trunk Railway Company, but that that company would be agreeable to the establishment of a joint rate of 35 cents per 100 pounds. That is, the company wants an increase of 25 per cent on the 28-cent rate suggested.

In view of the general increase in freight rates granted by the Governor in Council, by Order dated July 27, which would, of course, automatically have increased the 28-cent rate had it been made effective, it seems to me to be not unreasonable to increase this rate in accordance with the Order in Council. Wet wood-pulp is 10th-class freight, and the present 10th-class rate from Bromptonville to Fort Frances is 49 cents. Taking the east and west factors of this rate and applying the increase of the Order in Council in the same ratio to the 28-cent rate, the result would give a through commodity rate of 33½ cents, which rate should be established and made effective not later than August 15 instant.

OTTAWA, August 2, 1918.

Mr. Commissioner Boyce concurred.

In the matter of the War Measures Act; in the matter of the Order in Council No. P. C. 1863, dated July 27, 1918, raising railway freight rates as therein set out; and in the matter of the complaint of the Toronto Board of Trade.

File 28678.

REPORT OF THE CHIEF COMMISSIONER.

A protest has been made by the Board of Trade of the City of Toronto against the Order in Council raising freight rates and amendments to the order are requested. This application has been referred by the Honourable the Acting Prime Minister to be reported upon.

Two questions are raised in the application: It is urged that the new sugar rates "will place upon this staple food product an unwarranted burden," and that this commodity should not be called upon to bear a greater increase than other commodities. It is also submitted that the order should not become effective until August 27, so as to give time to the public to adjust itself to commercial conditions.

Complaint is also made in the same City that the increase was made without consulting either the shippers or the general public.

It is important that the basic principles on which the order was made should not be lost sight of. The position with which the Government was confronted was that a strike of certain railway employees was imminent; that a lengthy investigation had been made by a competent and in every sense well-qualified commission in the United States, as a result of which wages were very substantially advanced in United States territory; that the increased cost of living to which the railway employees in common

with the general public were subject obtained in Canada as well as in the United States; and that operating conditions in both countries were largely similar. That, as a measure of justice to railroad employees, their wages had been advanced in American territory; and that in order to provide sufficient revenues to cover the increased costs, substantial rate increases had also been made not only for freight but passenger traffic as well; that, as a measure of justice to Canadian railway employees, many of whom work on both sides of the line, the Government requested Canadian railways under its jurisdiction to adopt the so-called McAdoo Wage Scale, and for the purpose of providing the necessary funds, directed similar rate advances (although perhaps slightly lower than the advanced rates in American territory) but on freight traffic only.

The rates as fixed by the Order in Council are war rates, to meet a war emergency. In reporting upon similar increases in Canadian rates to those prescribed by the McAdoo order in American rates, the rates have not been passed upon by the Board as permanent rates. They may bear no relation to what the final rates ought to be, having regard to different commodities, when the war is over and conditions become normal.

The pressing necessity was to obtain revenue in order that strikes might be prevented and transportation carried on. The urgency was immediate and required immediate action. Public hearings in the different provinces or any hearings at all could not be held. Complaints many and serious have been made from time to time showing lack of facilities and unsatisfactory movements, many have come from Toronto. Adequate transportation can only be obtained if either the receipts or the reserves available are sufficient for the purpose of meeting not only running expenses and maintenance, but also for the purpose of improving, where necessary, an inadequate facility.

Subject to such considerations, I deal first with the complaint as to the rates on sugar. Sugar prices to the public have advanced considerably. Nevertheless, the article had moved at low commodity rates, and is carried at a lower basic charge than analogous commodities of preferably similar value in the same group of the freight classification—a preference that, whatever its origin, of course, has the effect of accentuating the amount of the increase allowed. The added burden complained of is a burden more in percentage than in fact, as compared with relative commodities.

The Honourable Mr. McAdoo was evidently of the opinion that sugar ought to move under its appropriate classification. There is no question but what the added receipts are necessary, and as already pointed out in the main report, the cost of transporting a pound of sugar on the 330-mile haul from Montreal to Toronto has advanced from 0.185 cent to 0.330 cent. Expressed in percentage the increase is undoubtedly great. In view, however, of the present financial necessity (which is by no means confined to the necessities of companies, but is also national, in view of the fact that the country itself now owns and is responsible for a considerably larger mileage than Canada's largest individual railway, the Canadian Pacific,) the money must be obtained.

I see no reason why the action taken in American territory should not be duplicated in Canada. On the other hand, apart from the financial emergency and added costs, it ought to be. Sugar in Canada does move under the appropriate fifth-class rate for longer mileages in Eastern territory. The low-commodity rates stop on the Grand Trunk at North Bay and on the Canadian Pacific at Sudbury. There is more justification for applying a lower basis of rates to long hauls than to short hauls. Here the converse is applied. As a matter of justice sugar rates ought to be placed on the same basis.

I now deal with the date on which the rates ought to become effective. It is much to be regretted that conditions are what they are; that the cost of living has gone up; that the war ever took place; and that, as a result, the costs of railway operation have increased. Unquestionably any advance in rates is a matter of annoyance,

and sometimes loss to shippers. Unquestionably, also, the longer the notice that can be given the less the resultant inconvenience and possible loss.

The Government, however, were obliged to deal with conditions as they found them. Among those conditions was the pressing necessity for an immediate wage increase without funds with which to meet it.

Reference is made in the Toronto Board of Trade's appeal to the action which has been taken in the United States. It is true that in the United States Mr. McAdoo's order did not go into effect until thirty days after its date. It is also true that in the United States the increased freight rates and the increased wage scale went into effect on the 25th day of June, so that the American railroad administration obtained the benefit of the rate increase at the same time that they were put to the cost of wage increase.

It is also true that in Canada, in some instances, the new wage scale dates back, but, speaking generally, comes into effect August first. The railway systems in Canada, therefore, whether owned by the country or by companies, only received added revenues twelve days after the added costs have applied. They are thus put to a loss to which the American railroad administration have not been subject, and a loss which is serious in view of the large amounts involved.

The question raised as to further postponing the date is practically as to whether this loss shall be extended for fifteen days more. In view of the fact that the only complaint as yet received from any board of trade is that of the Toronto Board of Trade, not only for the sake of brevity, but for a more concise statement of the existing situation, I deal with the position of the Toronto shippers on the one hand and the Grand Trunk railway on the other.

The Grand Trunk does the chief business in Ontario, and carries a very large proportion of Toronto's traffic, both in and out. It is certainly fair to say that Toronto, as much as any other municipality, uses and benefits by the service supplied by the Grand Trunk.

Nineteen sixteen was an exceptionally good year for the Grand Trunk; war costs in transportation had not commenced to be felt, at least to any serious extent, and the gross was large. War costs did commence appreciably to be shown in the spring of 1917. Bad as the results of 1917 were, the situation in 1918 is however, worse. The following statement shows the company's gross receipts for the five months, January to May, in each year. It also shows the net receipts after paying costs of operation and taxes:—

	1917.		1918.		Loss in Net.
	Gross Receipts.	Net Receipts.	Gross Receipts.	Net Receipts.	
	\$	\$	\$	\$	\$
January	3,788,177	662,468	3,236,262	- 869,618	1,532,086
February	3,032,980	108,397	2,774,475	- 1,179,965	1,288,362
March	4,007,624	852,760	4,286,715	- 65,892	918,652
April	3,778,421	944,197	4,988,984	+ 615,721	328,476
May	4,566,592	881,347	5,217,271	+ 742,071	139,276
	19,173,794	3,449,169	20,503,707	- 757,633	4,200,852

After March 15, 1918, the full effect of the increases granted by the Board in the so-called Fifteen Per Cent Case, became apparent, but these rate increases have not covered the constant cost increases.

In April and May, 1918, the gross receipts were \$10,206,255 as against \$8,345,013 for these months in 1917, resulting in the substantial increase of \$1,861,242, or 22.17

per cent. The net receipts, however, show a very different result. For the same two months in 1918 they were \$1,357,792 as against \$1,825,544, a decrease of \$467,752, or 25.06 per cent.

Net operations for the two months on the higher rate basis give an operating ratio of 86.696, or in other words leave the company 13.304 cents out of each dollar earned with which to pay fixed charges and to apply on dividends.

For the same period in 1917, operating on the lower rate basis, an operating ratio of 78.124 was secured, with a resultant balance out of each dollar earned of 21.876 cents.

The operating ratio for the whole year 1916 was 73.60, leaving a balance per dollar of 26.40 cents. The operating ratio for the whole year 1917 was 83.94, leaving a balance per dollar of 16.06 cents.

The fixed charges of the company amount to some \$9,617,979 which have to be paid before the preferred shareholders of the different classes can receive any dividend. If it be assumed that the large increased gross of April and May be maintained, and further assuming that no greater increase takes place in operating costs and that the employees were denied the benefit of the wage increase provided by the McAdoo scale, and to which the Government have found them entitled, the results would be as follows:—

Fixed charges for the two months' period (average of the twelve months), \$1,602.996.

Operating net, \$1,357,792.

Resultant deficit in running fixed charges, \$245,204.

For the whole year, therefore, adopting these two months as a basis, under the rates as increased by the Board and applicable before the Order in Council was passed, the position of the shareholders would be that not only could no dividends be paid, but the sum of \$1,471,224 would have to be found by the shareholders for the purpose of paying fixed charges.

The wage increase which the company are obliged to adopt under the original McAdoo scale and eight-hour day readjustment alone would increase that deficit by some \$7,157,000. It is absolutely obvious that the Grand Trunk is in such a position that at the earliest possible moment the full amount of increases which can be given that company under the order should accrue to it.

Over and above the fixed charges already referred to, the company has outstanding a guaranteed stock issue as well as first, second and third preference stock issues. These guaranteed and preferred stocks amount in all to \$124,503,747. The whole of these large issues obtained no return whatever in 1917. No regard is had whatever to the issue of ordinary stock which is, however, nearly as large as the total of the guaranteed and preferred issues. No dividend has ever been earned on this stock. In 1916 the amount available for dividends on the guaranteed and preferred stocks amounted to \$3,899,085. It is obvious that this profit to the shareholders can well be described as reasonable, leaving out of consideration the question as to whether the dividends were really earned in view of the condition of the property lack of proper maintenance and locomotive power which has already been reported on.

Many rates in Eastern Canada have always been held down by the rates that the Grand Trunk itself has operated on in adjacent American territory, and by the necessity of meeting the low rate scale obtaining in the Eastern States, as well as by water competition.

The Board put into effect its Fifteen Per Cent increase just as soon as these factors permitted, and shortly after the Grand Trunk increased its tariffs in United States territory. The McAdoo order rendered possible the further increase which the Government have authorized. This increase, large and all as it is when expressed in percentages, is not sufficient to remunerate the company doing a very large public service for Toronto's shippers.

The Grand Trunk is a large system; it has of necessity large terminals in Toronto. Its facilities there, however, are not excessive. The contrary is really the case. I have never seen any charge substantiated that railways were unduly taxed in Canada. The Grand Trunk, however, in 1917, was assessed by Toronto on its land and buildings \$10,679,028, and the amount of the Grand Trunk's resultant tax bill was \$272,315.21. In the year 1918 the company's assessment amounts to \$11,178,724. The abnormal tax rate for the year, in view of Toronto's increased expenses of 30.05 mills, results in a tax charge to the Grand Trunk of \$340,951.08, an increase in the one year of \$68,635, or 25.20 per cent.

In 1916 the gross earned was \$47,723,936, and in 1917, \$52,125,842, an increase of \$4,401,906. Notwithstanding this increase in gross the net of 1916 of \$5,842,085 (surplus \$3,899.05, contingencies reserve \$1,944,000) disappeared in 1917, and the reserve was reduced to \$127,715.

While the Grand Trunk shareholders paid Toronto in 1917 for taxes \$272,315.21 on but a small part of its investment, the result of the use of the whole of the Grand Trunk system in the service of the public at large was that the shareholders not only obtained no profit but actually lost \$1,816,285.

The members of the protestant Board of Trade are very directly interested in the service now being afforded by the Grand Trunk without remuneration to the company's shareholders, and the company's tax payments to the general city fund cannot be a matter of indifference to them.

The position of the company in 1918 is shown to be still more unfortunate. With increased gross receipts for the five months already referred to of \$1,329,913, the net receipts of 1917, inadequate as they proved to be, of \$3,449,169, became an actual operating deficit of \$757,683.

This deficit, of course, the company has to make good, and in addition has had to find money to the extent of \$4,642,853 with which to pay fixed charges. Beyond all question the company's situation is indeed one which requires all the relief that the new rates will afford, and without further delays.

The larger share of Toronto's business being carried by the Grand Trunk, that company's position ought properly to be first considered in connection with a Toronto complaint. The position of the Canadian Pacific is very different to that of the Grand Trunk—with the benefits it has received under the original agreement, the long through hauls it enjoys and the multiplicity of its operations coupled with the fact that much more money has been put into its property actually in public service than its total bond and stock liabilities no comparison exists between the two companies. But as a matter of fact if the earnings of 1917, the drop in net receipts that has already developed in 1918, and the increased costs to which that company is now subject to, be considered unless action had been taken by the Government in raising rates, not only would the company earn no surplus over dividends, but the dividends themselves would be impaired.

The amount of business the Canadian Northern does in Toronto is relatively small and the increasing deficits of that system too familiar to require comment.

I, for the foregoing reasons, beg to report that in my opinion the application of the Board of Trade of the City of Toronto be dismissed.

H. L. DRAYTON.

Ottawa, August 3, 1918.

ORDER No. 27460.

In the matter of the applications of the Twin City Coal Company, the Swift Canadian Company, the Northern Alberta Coal Operators' Association, and the Alliance Power Company, all of Edmonton, in the province of Alberta, for reduced rates on slack coal to that city:

File No. 27425.17.

SATURDAY, the 20th day of July, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, June 11, 1918, the applicants and the Canadian Northern, the Canadian Pacific, and the Grand Trunk Pacific Railway Companies being represented at the hearing, and what was alleged; and upon reading the further submission filed,—

It is ordered, That the application be, and it is hereby, dismissed

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27457.

In the matter of the application of the town of Kenora, Ont., hereinafter called the "applicant," under section 237 of the Railway Act, for authority to construct a highway crossing over the tracks of the Canadian Pacific Railway Company at a point near Keewatin, as shown on plan and profile on file with the Board under file No. 28645.

MONDAY, the 22nd day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, June 15, 1918, the applicant and the railway company being represented at the hearing, and what was alleged; and upon reading the report of an Engineer of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27458.

In the matter of the complaint of the Vipond Fruit Company of Winnipeg, Man., against a heater charge of \$15 per car on bananas from Minneapolis, Minn., to Winnipeg.

File No. 23540.8.

MONDAY, the 22nd day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Winnipeg, June 15, 1918, the complainant and the Canadian Pacific, Canadian Northern, and Grand Trunk Pacific Railway Companies being represented at the hearing, and what was alleged; and upon its appearing that there is no tariff provision for the supplying of heaters only,—

It is declared: That the heater charge of \$15 per car made by the Canadian Pacific Railway Company on bananas from Minneapolis to Winnipeg was wrongfully made, and the Canadian Pacific Railway Company is, therefore, hereby, authorized to refund the said amount to the complainant company.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27459.

In the matter of the application of the Great West Coal Company, Limited, the Edmonton Collieries, Limited, and Byers Mine Coal Company, for an Order directing the Grand Trunk Pacific Railway Company to reduce its rate on coal from the Great West spur to Edmonton.

File No. 27425.24.

MONDAY, the 22nd day of July, A.D., 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, June 11, 1918, the applicants and the railway company being represented at the hearing, and what was alleged,—

It is ordered, That the Grand Trunk Pacific Railway Company be, and it is hereby, required to reduce the rate on coal shown in its Special Joint and Competitive Freight Tariff, C.R.C., No. 285, from the mines on the spur of the Great West Coal Company, Limited, to Edmonton, to forty-five cents per ton.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27461.

In the matter of the complaint of Plunkett and Savage of Calgary, Alta., against a heater charge of \$22.50 per car from Minneapolis, Minn., to Calgary, via the Minneapolis, St. Paul, and Sault Ste. Marie and Canadian Pacific Railways, on five carloads of bananas ex New Orleans.

File No. 18855.18.

MONDAY, the 22nd day of July, A.D., 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Calgary, June 10, 1918, the complainants and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged; and upon its appearing that the bananas arrived at Minneapolis in heated cars and that there is no tariff provision for the supplying of additional heaters,—

It is declared, That the heater charge of \$22.50 per car from Minneapolis to Calgary made by the Canadian Pacific Railway Company on the said five carloads of bananas was wrongfully made, and the Canadian Pacific Railway Company is, therefore, hereby authorized to repay to the complainants the excess amount charged and collected by it on the said shipments.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27462.

In the matter of the complaint of the Security Traffic Bureau of Minneapolis, Minn., alleging overcharge by the Canadian Pacific Railway Company on a shipment from Winnipeg, April 27, 1912, to Wilkie, Saskatchewan, described in the bill of lading as "62 bundles of mouldings."

File No. 16453.13.

MONDAY, the 22nd day of July, A. D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, June 15, 1918, the Canadian Pacific Railway Company being represented at the hearing, no one appearing for the applicant,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner

ORDER No. 27467.

In the matter of the application of the city of Winnipeg for an Order to extend the delivery limits of the express companies in the city of Winnipeg as follows:—

In Ward 1. To include the district bounded on the north by the southern limit of Kylemore avenue; on the south by the southern limit of lot No. 17 of the parish of St. Boniface; and on the east by the western limit of Daly street; and on the west by the centre line of the Canadian Northern Railway, plan 357.

And in the matter of the Order of the Board No. 26944, dated January 28, 1918, made herein.

File No. 4214.145.

MONDAY, the 22nd day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Winnipeg, June 15, 1918, the applicant and the Express Traffic Association being represented at the hearing, and what was alleged,—

It is ordered: That the said Order No. 26944, dated January 28, 1918, be, and it is hereby, amended so as to extend the collection and delivery limits of the express companies in the city of Winnipeg to include the territory bounded on the north by Kylemore avenue, on the west by Cockburn street, on the south by the south line of lot No. 17 of the parish of St. Boniface, and on the east by Daly street.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27471.

In the matter of the application of the Hamilton Radial Electric Railway Company, hereinafter called the "applicant company," for an Order permitting it to file tariffs providing for a general advance in the tolls for the carriage of passengers and freight over its line, in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439.6.

MONDAY, the 22nd day of July, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, June 24, 1918, the applicant company, the townships of Nelson and Trafalgar, the Burlington Beach Commission, the town of Oakville, the town of Burlington, and the city of Hamilton being represented at the hearing, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the applicant company be, and it is hereby, authorized to increase its standard maximum freight mileage tariff by 15 per cent, and its carload rates on coal and coke by 15 cents a ton.

2. That the applicant company be, and it is hereby, authorized to increase its standard maximum passenger tariff from two cents to two and seven-eighths cents per mile, subject, however, to the limitations created by the by-laws of the township of Saltfleet, the village of Burlington, the township of Nelson, and the town of Oakville, consenting to the construction and operation of the applicant company's railway through their respective municipalities.

And it is further ordered: That the increased rates herein authorized shall not become effective until the company has complied with the requirements of sections 327 and 331 of the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27481.

In the matter of the application of the town of Greenfield Park, in the province of Quebec, for an Order directing (1) that two limited through cars of the Montreal and Southern Counties Railway Company leave Greenfield Park daily, except on Sundays at 6.20 a.m. and 7 a.m., and that two limited through cars from Montreal to Greenfield Park for Greenfield Park people only leave Montreal daily, except on Sundays, at 5.40 p.m. and 6.20 p.m.; and (2) that all local cars stop at each street in the town of Greenfield Park including Murray and Fairfield avenues, and that all Chambly and Granby cars stop at Greenfield Park station.

File No. 25357.2.

THURSDAY, the 25th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the applications at the sittings of the Board held in Montreal, June 10, 1918, in the presence of counsel for the applicant and the railway company, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 243.

In the matter of the General Order of the Board No. 230, dated May 17, 1918, in the matter of the interswitching of freight traffic, and General Order No. 239, dated June 19, 1918, postponing the effective date of the said General Order No. 230 until the first day of August, 1918.

Case No. 2346.

THURSDAY, the 25th day of July, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed by the Canadian Manufacturers' Association and upon its request for further postponement of the effective date of General Order No. 230, and upon reading the protest filed by the Winnipeg Board of Trade and by the Dominion Glass Company,—

It is ordered: That the effective date of the said General Order No. 230, dated May 17, 1918, be, and it is hereby, further postponed until the first day of October, 1918.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 244.

In the matter of section 292 of the Railway Act as amended by chapter 37 of 7-8 George V, section 8, General Order No. 39 dated July 8, 1909, Circular 110, dated April 3, 1913, and Supplements thereto numbers 1 and 2 dated respectively April 30, 1918, and June 6, 1918, Circular No. 131, dated March 11, 1914, and circular No. 161, dated March 8, 1918.

File No. 45

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*D'ARCY SCOTT, *Assistant Chief Commissioner.*HON. W. B. NANTTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

FRIDAY, the 26th day of July, A.D. 1918.

Upon the report of the Chief Operating Officer of the board to the effect that railway companies are not fully complying with the requirements of the Act in reporting accidents to the board, and pointing out the desirability of a uniform practice on the part of railway companies in making returns of accidents, and upon his recommendation,—

It is ordered: 1. That every railway company subject to the legislative authority of the Parliament of Canada be, and it is hereby required and directed within six days after the head officers of the company have received information of the occur-

rence upon the railway belonging to it of any accident, attended with personal injury to any person using the railway, or to any employee of the company, or whereby any bridge, culvert, viaduct, or tunnel on or of the railway has been broken or so damaged as to be impassable or unfit for immediate use, give notice thereof to the board, such notice to be addressed to the Chief Operating Officer of the board and to be made on hard paper in the forms "A" (relating to Highway Crossing Accidents Only) and "B" (relating to Accidents Other than those Occurring at Highway Crossings), schedules to this order; such reports to be limited to accidents caused by transportation, that is to say where train movements are involved and not to apply to accidents occurring in railway shops or other manufacturing establishments, the property of railway companies.

2. That in the case of derailments, collisions, and highway crossing accidents attended by personal injury, and in the case of any damage to any bridge, culvert, viaduct, or tunnel so as to render the same impassable or unfit for immediate use, the conductors or other employees of every such company shall, at the expense of the company and at the same time they report to the company, send to the Board addressed to its Chief Operating Officer a telegram containing the following information:—

- (a) Date and place.
- (b) Name of railway.
- (c) Number and description of train or trains, engine or engines concerned.
- (d) Number of passengers, employees or others killed and injured.
- (e) A short and concise statement of the apparent cause of the accident.
- (f) Name and title of person sending report.

3. That where any such company grants or has granted running rights or the joint use of its line or any portion thereof to another company and the last-named company is concerned in an accident occurring on said joint section required under this Order to be reported both companies shall report to the Board as herein provided.

4. That every such railway company place before their conductors or other employees affected by the order a copy of paragraph (2) of this order directing said conductors or other employees to comply directly with the requirements of the provision.

5. That the said general order No. 39, circular 110 with supplements Nos. 1 and 2, circular No. 131, and circular No. 161 be, and they are hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

SCHEDULE "A"

191

.....Railway

REPORT to the Board of Railway Commissioners for Canada as required by Section 292 of the Railway Act and General Order of the Board No. 244.

1. Date and hour of accident

2. Train.

Conductor.

Engine.

Engineer.

3. Province

4. Place of accident

State if in city, town, village, or township.
If in city, town, or village, give name of Street; if no name, say how many crossings from station specifying direction. If in township, give distance in miles and fraction of mile from nearest station, specifying direction, also give distance of nearest mile post of Sub-division and any other information of an identifying character.

5. (a) Particulars of accident.

(b) Name of persons injured or killed and addresses.

6. Was crossing protected at time of accident and if so in what manner?

7. Time and date, speed limitation of ten miles an hour established or watchman put on as required by sec. 275 (sub-sec. 4) and General Order No. 77.

8. If any previous accident at same place subsequent to 1900, give date, if more than one accident give date of last one only.

9. Remarks covering any other information that the Company thinks should be submitted not covered by the foregoing details.

I certify that from inquiries made by me, or my knowledge, the foregoing return is correct.

N.B.—Use only one form for each accident, attaching plain extension sheets if insufficient space here.

Signature.....

Title

SCHEDULE "B"

.....191

.....Railway

REPORT to the Board of Railway Commissioners for Canada, as required by section 292 of the Railway Act, and by General Order of the Board No. 244.

1. Date			
2. Hour.			
3. Train	Conductor.	Engine.	
	Engineer.		
4. Place			
Province			
5. Name of person or persons injured or killed.			
6. Age			
7. Passenger, employee or others.....			
8. Residence			
9. Description of injury.....			
10. How accident occurred.....			
<p>NOTE —If injury or damage be to a bridge, culvert, viaduct or tunnel, answer numbers, 1, 2, 4, 9 and 10.</p>			

N.B.—Use only one form for each accident, attaching plain extension sheets if insufficient space here.

Signature.....

Title.....

ORDER No. 27456.

In the matter of the application of the Montreal and Southern Counties Railway Company, hereinafter called the "applicant company," for an Order permitting it to file tariffs providing for a general advance in the tolls for the carriage of passengers and freight over its line in the same manner and to the same extent as has been permitted by the Board in the case of steam railways.

File No. 28439-3

SATURDAY, the 27th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, June 10, 1918, in the presence of counsel for the applicant company and the municipalities of Greenfield, Longueuil, Montreal South, and St. Lambert, and what was alleged; and upon reading the further submission filed,—

It is ordered: That the applicant company be, and it is hereby, authorized to publish and file tariffs increasing its existing freight rates except on coal and coke by 15 per cent, and its rates on coal and coke by fifteen cents a ton; also to increase its standard maximum passenger rate so as not to exceed 2.875 cents a mile.

2. That the increased rates herein authorized shall not become effective until the applicant company has complied with the requirements of sections 327 and 331 of the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27493.

In the matter of the application of residents tributary to the Canadian Northern Railway Company southeast of Edmonton, Alta., for an Order directing the said railway company to move its station, siding, and loading platform at Looma, Alta., from its present location about one mile northwest to a point at or near the northeast quarter of section 34, township 50, range 23, west of the Fourth Meridian.

File No: 28572.

MONDAY, the 29th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application of the sittings of the Board held in Edmonton, June 11, 1918, the applicants and the railway company being represented at the hearing, and what was alleged; and upon the report and recommendation of an inspector of the Board concurred in by its chief operating officer,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, required to move its station building, siding, and loading platform from its present location about one mile northwest of Looma, Alta., to a point at or near the northeast quarter of section 34, township 50, range 23, west of the Fourth Meridian, subject to and upon the condition that the railway company be provided free of charge with the land necessary for the new site; the work to be completed on or before September 1, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27506.

In the matter of the application of the rural municipality of Bushville No. 348, of Lydden, Sask., for an Order directing the Grand Trunk Pacific Railway Company to construct a station at Lydden.

File No. 25632.

MONDAY, the 29th day of July, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Saskatoon, June 12, 1918, in the presence of counsel for the railway company, no one appearing for the applicant, and what was alleged; and upon reading the report of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered, That the Grand Trunk Pacific Railway Company be, and it is hereby, required to construct a station at Lydden, Sask., in accordance with its standard station plan "A"; the work to be completed by October 31, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27507.

In the matter of the application of the Board of Trade of Ribstone, Alta., for an order directing the Grand Trunk Pacific Railway Company to erect a suitable station and employ a permanent agent at that point.

File No. 22680.

MONDAY, the 29th day of July, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, June 11, 1918, the applicant and the railway company being represented at the hearing, and what was alleged; and upon reading the report of an Inspector of the Board concurred in by its Chief Operating Officer,—

It is ordered: That the Grand Trunk Pacific Railway Company be, and it is hereby, directed to appoint a station agent at Ribstone, Alta., on or before September 1, 1918.

2. That the application for a station building at the said point be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27513.

In the matter of the application of the Edmonton, Dunvegan, and British Columbia Railway Company, hereinafter called the "applicant company", for authority to remove its station agent at Cardiff, Alta., and to open an agency in lieu thereof at Morinville, Alta.

File No. 4205.158.

MONDAY, the 29th day of July, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filled in support of the application, and upon the report and recommendation of an Inspector of the Board concurred in by its Chief Operating Officer,—

It is ordered, That the applicant company be, and it is hereby authorized to remove its station agent at Cardiff, Alta., and to open an agency at Morinville, Alta., in lieu thereof. The applicant company to continue Cardiff as a non-agency station and to appoint a caretaker to keep the station clean and when necessary heated and lighted for the arrival and departure of passenger trains.

H. L. DRAYTON,
Chief Commissioner.

ORDER NO. 27512.

In the matter of the complaint of the Canadian Corrugated and Fibreboard Container Association, of Toronto, Ontario, against the proposed increase in ratings published in Supplement No. 11 to the Canadian Freight Classification No. 16 on bonnets and hats, trimmed and untrimmed, when shipped in fibreboard, pulp-board, or corrugated strawboard containers.

File No. 19367.78.1

TUESDAY, the 30th day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, June 24, 1918, the complainants, the Canadian Freight Association, the Toronto Board of

Trade, and the Canadian Manufacturers Association being represented at the hearing, and what was alleged, and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER NO. 27509.

In the matter of the application of the Canadian Freight Association, on behalf of the railway companies subject to the jurisdiction of the Board, under section 321 of the Railway Act, for approval of a proposed Supplement No. 11 to the Canadian Freight Classification No. 16, containing certain increased, reduced and additional ratings, on file with the Board under file No. 19367.78.

WEDNESDAY, the 31st day of July, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Notice having been given in the *Canada Gazette* by the railway companies, as required by section 321 of the Railway Act, and the proposed changes having been fixed by consent of the parties or by Orders of the Board, or reserved for Order of the Board; upon the consideration of what has been filed; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the proposed Supplement No. 11 to the Canadian Freight Classification No. 16 as finally revised and submitted for approval by G. C. Ransom, chairman of the Canadian Freight Association, by his letter dated June 4, 1918, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27508.

In the matter of the application of the Montreal and Southern Counties Railway Company, hereinafter called the "applicant company," under sections 327 and 331 of the Railway Act, for approval of its Standard Maximum Freight Mileage Tariff, C.R.C. No. 33, and its Standard Maximum Passenger Tariff, C.R.C. No. 21.

Files Nos. 12256.4 and 12256.3.

THURSDAY, the 1st day of August, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The said Standard Freight and Passenger tariffs having been filed on the basis permitted by the Board in its Order No. 27456, dated July 27, 1918,—

It is ordered, That the applicant company's said Standard Maximum Freight Mileage Tariff, C.R.C. No. 33, and Standard Maximum Passenger Tariff, C.R.C. No. 21, be, and they are hereby approved, subject to compliance with the requirements of sections 327 and 331 of the Railway Act before being made effective.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27517.

In the matter of the application of the Hamilton Radial Electric Railway Company, hereinafter called the "applicant company," under sections 327 and 331 of the Railway Act, for approval of its Standard Maximum Freight Mileage Tariff, C.R.C. No. 5, and its Standard Maximum Passenger Tariff, C.R.C. No. 4.

File No. 15860.

THURSDAY, the 1st day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The said standard freight and passenger tariffs having been filed on the basis permitted by the Board in its Order No. 27471, dated July 22, 1918,—

It is ordered: That the applicant company's said Standard Maximum Freight Mileage Tariff, C.R.C. No. 5, and Standard Maximum Passenger Tariff, C.R.C. No. 4, be, and they are hereby approved, subject to compliance with the requirements of sections 327 and 331 of the Railway Act before being made effective.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27525.

In the matter of the application of the Canadian Pacific Railway Company, exercising the franchises of the Ontario and Quebec Railway Company, hereinafter called the "applicant company," under sections 257 and 261 of the Railway Act, for authority to open for the carriage of traffic the additional track constructed between mileage 0-00 and mileage 2-00, and to use and operate the two concrete viaducts at mileage 0-9 and 1-8 respectively on its Toronto Terminals North Toronto Branch.

File No. 22262-24.

WEDNESDAY, the 7th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic the additional track constructed between mileage 0.00 and 2.00, and to use and operate the two concrete viaducts at mileage 0.9 and mileage 1.8, respectively, on its Toronto Terminals North Toronto Branch.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 245.

In the matter of the complaints of the Dominion Millers' Association and the Toronto Board of Trade against the increased carload minimum weights on grain and grain products for domestic consumption, published by the railway companies to take effect April 2, 1917.

And in the matter of the application of the Canadian Railway War Board for permission to increase the minimum carload weight of flour as fixed by the general order of the Board No. 186, dated April 4, 1917.

Files Nos. 28192 and 19475-37.

THURSDAY, the 8th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the consent of the Dominion Millers' Association, the Toronto Board of Trade, and the Montreal Board of Trade, on file with the Board,—

It is ordered: That clause 4 of the general order of the Board No. 186, dated April 4, 1917, be, and it is hereby, amended so as to provide that, until further order of the Board, the minimum carload weight of flour shall be fifty thousand pounds when loaded in cars of the capacity of 60,000 pounds or 70,000 pounds.

H. L. DRAYTON,
Chief Commissioner.



The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Application municipal corporation of the township of Colchester South, Ont., for an Order establishing a highway crossing over the Pere Marquette R.R., so as to connect up the highway with Oak street, in the village of Harrow, Ont.

File No. 27050.

JUDGMENT.

THE CHIEF COMMISSIONER:

The application came on for hearing at a sitting of the Board held in the city of Windsor, June 25, 1918, and the matter was reserved.

The highway which it is sought to open is required for the purpose of affording access to the W. Clark, Limited, canning factory. This is a new property and is at the present without highway connection except for a private crossing and then along open property to Oak street. Oak street, in its turn, runs into Queen street, which is the main travelled highway.

There is at the present a level railway crossing over the Pere Marquette tracks on Queen street. The village of Harrow, where there appears to be the greater amount of immediate development, lies to the south of the Pere Marquette. Oak street, a street running east and west and ending with a dead-end some distance from the railway track, is to the north.

If a highway crossing be installed as asked it will be opened on a curve of 4 degrees. The effect of the curve is intensified by the canning company's building, which is close to the railway right-of-way and served by a railway spur.

The result is that no proper view could be obtained by vehicles approaching the rail crossing from Oak street as extended. If the new crossing is opened as applied for, two level crossings will exist, both of them at dangerous points having regard to the railway's curvature and the erection of buildings, within one thousand feet of each other.

Access can be had to the property without duplicating this danger to the public by extending Sinisac avenue some three hundred feet west and then opening a new street some six hundred feet in length to the new factory.

If Oak street were extended, those approaching from the north would travel some thirteen hundred feet less than if they proceeded south over Queen street crossing and along Sinisac avenue. On the other hand, those approaching from the south, instead of having to pass one rail crossing, more or less dangerous, would be obliged

to cross two, and settlement is more advanced and the district mostly built up in the village of Harrow which lies to the south.

One of the Board's Assistant Engineers, Mr. Belanger, has reported as follows:—

"On the 22nd inst. I examined the site of the crossing asked for at the village of Harrow, Ont. I was accompanied by the reeve of the township and Mr. Clark; and the railway company's solicitor, engineer, and superintendent.

"The crossing asked for is for the purpose of access to the recently constructed canning factory of W. Clark, Ltd., also the connecting of Forsythe on the west with Queen street on the east by what is known as an extension of Oak street. This crossing would give access to people from the north-east district having business with the factory. People from the northwest district would have access to the factory by the proposed road without, of course, crossing the track.

"The view is somewhat obstructed on the northwest corner by the factory buildings and on the southeast corner by buildings and material yard of the Quality Canning Company's plant, while on the northeast and southwest corners the view is good, as the land at present is vacant. This location is in the railway yard of the Pere Marquette Railway at a point about 1,000 feet northwest of Queen street crossing. The point of proposed crossing is at the middle of a four-degree curve. There are eleven train movements daily at this point, four of which stop at Harrow station, the remainder being through movements, therefore, would travel at a fairly good rate of speed.

"Under those circumstances I am of the opinion that this is not a favourable place for a highway crossing.

"The railway company have suggested an alternative road to give access to the canning factory, that is, by the extension of Sinisac avenue westward then northerly across private property to the proposed extension of Oak street. Mr. Clark and the township reeve, I understand, have considered that proposition and have tried negotiations with the landowners, but were unable so far to make a final arrangement with the landowners in connection with acquiring the extra land for the alternative road.

"In my opinion the proposition as suggested by the railway company is the proper one to provide access to the canning factory, and a connection between Queen street and Forsythe road, as not only would it serve for these purposes, but it would also provide direct access to the factory from the village which to my mind will be necessary eventually so that the people employed at the factory and living in the village can get to their work.

"I suggested to the reeve of the township that the township council negotiate officially with the landowners and if necessary expropriate the land required for the alternate road. The reeve advised that he would confer with the township solicitor on that proposition. I think that under the circumstances the matter should still be set down for hearing."

No submissions were made at the hearing which detract in any way from the soundness of Mr. Belanger's recommendations. I am of the opinion that in the interests of public safety the application ought to be refused.

OTTAWA, August 9, 1918.

Mr. Commissioner McLean concurred.

File No. 18402-8.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

The council of the corporation of the town of North Bay, by by-law, duly passed the 24th day of June, 1918 (that is, since judgment was delivered by this Board, but before any order made thereon), has legislated for the stopping up and closing of those portions of the streets and highways in North Bay in question herein and referred to in my judgment dated 24th April last. A copy of the by-law as passed is on file.

The by-law, now passed, is the by-law which, originally by Order No. 20500. the municipality of the town of North Bay undertook to pass. The last-mentioned Order was based upon that undertaking, as well as the undertaking of the railway company as to payment of compensation or damages. The judgment of the 24th April last was necessary to establish the Board's position on the failure of the town to pass the by-law, and of the company to pay damages. The application, upon which such judgment was rendered, was for relief against the consequences of the joint default of the town and company. Reference to the last clause of my judgment will show that it was hoped that the town of North Bay would yet fulfil its undertaking. It has now done so, and appropriate remedy is open to all parties aggrieved under the Municipal Act, which was what was contemplated by Order No. 20500. Under that machinery all questions can be determined which were provided for in the judgment of 24th April last, and the passage of the by-law, though tardy, has opened the way, contemplated by the original order (20500) for all questions of compensation to be settled by an independent tribunal under the Municipal Act. That object being attained, I think this Board should make no order whatever, but leave all questions to be determined, as originally contemplated, and in consonance with the undertakings of the respective parties upon which the said order was based.

If there is any complication the matter can be spoken to.

August 15, 1918.

The Chief Commissioner and Mr. Commissioner McLean concurred.

Application of the New Minas Fruit Company, Limited, for an Order directing the Dominion Atlantic Railway Company to continue service on siding of the applicant company without any charge in excess of the regular freight rates and that the railway company return charges unjustly collected for the upkeep of the siding.

File No. 28529.

JUDGMENT.

Mr. COMMISSIONER McLEAN:

The New Minas Fruit Company of White Rock, N.S., sets out that prior to the building of its warehouse on the Dominion Atlantic Railway in the year 1912, a discussion took place between representatives of the company and Mr. Gifkins, then general manager of the Dominion Atlantic Railway, and it is further set out that as a result of the discussion so taking place, an agreement was entered into under which the applicant company was to grade the land for the siding and supply the necessary ties, and the railway company was to furnish the remainder of the necessary material and labour, and also to maintain the siding in good repair.

It is not disputed by the railway that there was some agreement. The agreement not having been reduced to writing, there is a dispute about the terms. In proof of what was agreed upon the applicant company submits affidavits of Messrs. Leonard

S. Bishop and Ernest H. Johnson, setting out statements as to what was agreed upon. The affidavits are as follows:—

(A)

“GREENWICH, KINGS Co., N.S., January 31, 1918.

“I, Ernest H. Johnson, of Greenwich, in the county of Kings, N.S., farmer, make oath and say as follows:—

“That during the spring of the year 1912, Mr. L. S. Bishop and myself were appointed by the New Minas Fruit Co., Ltd., to interview Mr. Gifkins, then manager of the Dominion Atlantic Railway and make arrangements for siding to said company’s apple warehouse.

“That Mr. Bishop and myself agreed, for the New Minas Fruit Co., Ltd., that the work of grading the said siding shall be performed and the necessary sleepers shall be furnished by and at the expense of the said company.

“That the manager, Mr. Gifkins, agreed for the Dominion Atlantic Railway Company, that the construction of said siding shall be completed, and the remainder of the material furnished by and at the expense of the said railway company.

“And that the New Minas Fruit Co., Ltd., shall be exempt from any further fees or charges in connection with the construction or upkeep of said siding.

“I also make oath and say that as president of the New Minas Fruit Co., Ltd., at our first annual meeting, I congratulated the members of said company on having built our warehouse the previous and thus escaping the yearly tax on sidings.

“ERNEST H. JOHNSON.

“J. E. FRANKLIN, *J.P., in and for the county of Kings.*”

(B)

“SUNNYSIDE, N.S., February 1, 1918.

“I, Leonard S. Bishop, of Sunnyside, in the county of Kings, N.S., farmer, make oath and say as follows:—

“That during the spring of the year 1912, I was working in the interest of the New Minas Fruit Company, Ltd., in the capacity of organizer.

“That with a view to arranging for the construction of a railway siding to connect the proposed warehouse of said company with the track of the Dominion Atlantic Railway, I interview the general manager of the Dominion Atlantic Railway Company at his office, Kentville, and at this interview it was agreed that a siding be laid in accordance with the following terms and conditions:—

“1. That the work of grading the land in preparation for the construction of said siding shall be performed, and the necessary sleepers shall be furnished by and at the expense of the New Minas Fruit Company, Ltd.

“2. That the construction of said siding shall be completed and the remainder of the necessary material furnished by and at the expense of the Dominion Atlantic Railway Company.

“3. That the New Minas Fruit Company, Ltd., shall be exempt from any further fees or charges in connection with the construction or maintenance of said siding.

“I further make oath and say that the resident engineer of the Dominion Atlantic Railway Company, at the time of construction of aforesaid siding, in

conversation with me personally, confirmed the substance of the foregoing agreement and stated that we had been enabled to obtain more satisfactory terms by having the siding constructed at this time than we could have obtained had the arrangements been made at a later date.

"LEONARD S. BISHOP.

"Sworn to at Greenwich, in the county of Kings, this 1st day of February, A.D. 1918.

"Before me,

"G. E. BISHOP, *J.P.*"

The siding was thereafter constructed. It is located between the stations of Kentville and Port Williams, being about 2 miles from Kentville and a somewhat slightly longer distance from Port Williams. The siding is located wholly on the right-of-way of the railway, the warehouse being adjacent thereto and served therefrom. At both Kentville and Port Williams there are station facilities. The location of this siding shortens the highway haul. It is stated in evidence by Mr. MacMahon, a representative of the United Fruit Companies of Nova Scotia, that practically all the warehouse siding are at terminals, the present siding being "the only case of its kind in a hundred warehouses." (Evidence, vol. 286, p. 2746.)

Under date of March 5, 1917, the applicant company was requested by the railway to sign a siding agreement in respect of said siding. The form of the draft of the siding agreement is that used by the Canadian Pacific Railway, the name of the Dominion Atlantic Railway being substituted for that of the former railway therein. Under the draft agreement a rental of \$36 per annum was called for and in terms of the agreement the applicant company was also to be responsible for maintenance charges.

The applicant company refused to sign the siding agreement. Certain negotiations took place between the secretary of the company and the railway, and it is stated that the general manager of the railway reduced his claim for rental to \$21 per year, commencing May, 1917, instead of 1912, and offered to accept \$45 in settlement of repairs, and also to exempt the applicant company from all further charges for maintenance of the siding. In evidence, vol. 286, p. 2752, Mr. Young, the secretary of the company, testified as follows:—

"Mr. WICKWIRE: Isn't it a fact that the railway maintains to-day that you owe them arrears of rent?

"Mr. YOUNG: No. Mr. Graham himself admitted it was unfair. I saw Mr. Graham after they sent in the bill and he said that thing has never been pointed out to me before. He said there is 800 feet of track there when 300 would be sufficient. He said, we would be satisfied if you would pay rental on 300 and \$21 for repairs, and we will exempt you from all future payment, it is not fair that you should pay for the upkeep of that.

"The CHIEF COMMISSIONER: He said he would reduce the rent to \$21?

"Mr. YOUNG: Yes."

Evidence in rebuttal of this was not submitted by the railway. The railway in its reply to the complaint as filed, states that all spur tracks constructed for private parties in 1917 came under their standard agreement, and that with a view to all parties being treated alike they insisted, and still insist, that all trackage built previous to 1917 should come under these regulations. The railway states that the rental charge of \$36 per year is not onerous for a spur 816 feet in length; it states that it can find nothing in its files to indicate that the spur was to be maintained perpetually by it; and that it would appear that the track had been built in 1912 as other spurs had been, without definite arrangements as to rental. The applicant contends in its

complaint that the spur in question is longer than was needed for its business, and the excess length was due to the desire of the railway to relieve the congestion at Port Williams. The railway states that this is not so, setting out that the spur is located on the summit of heavy grades east and west, and at the point of a curve one and one-half miles west of Port Williams. It states that loads from Port Williams go east and there is no necessity of hauling loads west from that point to the summit of a grade in order to store in the spur by making dangerous drop switches; and it continues that, as empties come from the east for Port Williams, the spur serves no useful purpose as far as the congestion at Port Williams is concerned; and it also states that the latter point has sufficient trackage to meet all requirements.

At the hearing, as well as in the written statements submitted, it was contended that the siding was used for other traffic than that of the applicant company. The extent to which this is true is contested, but apparently some traffic other than that of the applicant company does make use of the spur.

What is in issue is the matter of rental and upkeep. In the affidavits already set out it is stated that a term of the agreement was that the applicant company was to be exempt from any further fees or charges in connection with the construction or maintenance of the siding. At the hearing evidence was given by Mr. Bishop, who signed one of the affidavits in question. He was examined by Mr. Roscoe, counsel for the applicants, and cross-examined by Mr. Wickwire, who appeared for the railway. The following extract from the evidence, vol. 286, pages 2751-52, is pertinent:—

"The CHIEF COMMISSIONER: You see you have not told us anything whatever about maintenance.

"Mr. BISHOP: Maintenance of what?

"The CHIEF COMMISSIONER: Keeping it going.

"Mr. BISHOP: There was nothing said about the sleepers after the first batch was laid.

"The CHIEF COMMISSIONER: Not a word said?

"Mr. BISHOP: Not a word; there was the mere mention of metal and that was all; nothing said about sleepers.

"Mr. ROSCOE: The word 'maintenance' has been too hard for you to struggle with. Anything said about upkeep or repair?

"Mr. BISHOP: No.

"Mr. ROSCOE: Anything said about who should repair it?

"Mr. BISHOP: There was nothing said about it. We were to find the first batch of sleepers.

"Mr. WICKWIRE: How much were you to pay for this? Was there anything said about how much you were to pay for the privilege?

"Mr. BISHOP: No.

"Mr. WICKWIRE: Were you to pay interest?

"Mr. BISHOP: No, or we would not have put it in. There was nothing said or we would not have put it in."

Counsel for the applicants referred to section 317 of the Railway Act as setting out the obligations of the railway in respect of facilities. It would seem, however, that the question of the obligation of the railway to supply facilities for the "loading of all traffic offered for carriage upon the railway" falls more properly within the provisions of section 284, and the obligation there is to supply such facilities "at the place of starting, and at the junction of the railway with other railways, and at all stopping places established for such purpose." The Board has held in *Kammerer v. C.P.R.*, 21 C.R.C. 74, at p. 76, that it is without jurisdiction to order a carrier to place cars for receipt of traffic at points on its railway other than the point of starting, the point of junction with other railways, and established stopping places. Here there was involved a question of the power of the Board to direct that a car should be

placed on a portion of a siding which is on the right-of-way of the railway, said portion of siding being located at a point between stations.

The Board being without power under the Railway Act to direct that facilities should be installed between stations, it would obviously be unable to make, in the first instance, an Order for the installation of the siding in question. The siding having been installed by arrangement between the parties, does not extend the powers of the Board, and the Order asked for cannot be granted.
August 16, 1918.

The Chief Commissioner concurred.

Complaint of the Wolfville Fruit Company, Limited, against the Dominion Atlantic Railway re construction of spur for the complainant company at Wolfville.

File No. 25384-1.

JUDGMENT.

Mr. COMMISSIONER McLEAN:

The applicant company has built a warehouse at Wolfville, N.S., for the purpose of handling farm produce and bringing in supplies for its members. The warehouse is on the property of the applicant adjacent to the southern boundary of the right-of-way of the railway company. It is so located that it can be served by a track on the right-of-way of the railway. The railway has, at the request of the applicant, submitted a statement of the cost of the spur track necessary to serve the warehouse as located. The cost as submitted amounts to \$460. In addition, there is a rental charge of \$26 a year. The position of the applicant is, in substance, that the whole burden should be borne by the railway on the ground that it is its duty to put in the siding. Under section 284 of the Railway Act obligations are placed on the railway in respect of supplying adequate and suitable accommodation for the receiving and loading of all traffic offered for carriage upon the railway as well as for the unloading and delivering of such traffic, and it is also obligated to furnish and use all proper appliances, accommodation, and means necessary for receiving, loading, carrying, unloading, and delivering such traffic.

Without developing the matter at length, it would appear that this obligation is met by the company supplying adequate team tracks for carload freight and adequate shed facilities for the handling of less than carload freight. In practice, industries are located on sidings which give them the facility of improved accommodation over and above that already referred to, and to this extent the two situations are not on all fours.

At Wolfville the railway has various industrial sidings on its right-of-way, and, so far as the evidence submitted shows, these sidings serve industries located on the railway's property, there being also rental charges for the building sites.

A site is proposed by the railway on its property adjacent to the most northerly spur shown on the plan. Objection is taken to this by the applicant company on the ground that it is unsuitable. It was stated that the location is on the north side of the track sloping off towards low marshy land. It is necessary that such a warehouse should be frost-proof and have a frost-proof cellar, and at the point in question there is no opportunity for drainage. Nothing in rebuttal to the foregoing was submitted by the railway.

The railway took the position that the applicant had gone on and had constructed on its own property, and that the construction involved additional and unnecessary trackage; but, as pointed out, the only site on its own property served by existing industrial tracks which the railway was able to point out was one which was not satisfactory for the company's business. On the particular facts and its appearing that the

facilities offered by the railway are tied down to trackage serving the particular site on its land which site will not afford "suitable accommodation" the railway should furnish the facilities as asked for at no greater charges, if any, to the applicant than would have applied in respect of the facilities in connection with the site as proposed by the railway.

August 17, 1918.

The Chief Commissioner concurred.

In the matter of the War Measures Act, 1914; in the matter of the Order in Council No. P. C. 1863, dated July 27, 1918, raising railway freight rates as therein set out; and in the matter of the complaints hereinafter mentioned.

File No. 28678.6.

REPORT OF THE CHIEF COMMISSIONER.

Since reporting on the complaint of the Toronto Board of Trade complaints have been received by the Cabinet having particular regard to the spread in the new sugar rates, and a further report is required.

The present complainants are the Atlantic Sugar Refineries of St. John and the Acadia Sugar Refining Company of Halifax. The complaints of both companies have since been endorsed by the Boards of Trade of each city. In addition to these complaints an issue largely similar is raised in western territory by the complaint of the British Columbia Sugar Refineries.

The present case does not turn at all on the interests of the consumer, either as to price or as to output. The issue is largely one which has to do with claims of rival refineries on the one hand (not so much against railways as against each other) and the necessity of increased railway revenues on the other.

Much misapprehension appears from written submissions that have been made, not so much by companies as by boards of trade and sympathizers, or shareholders in the different companies. It is necessary that the actual issues be defined and understood.

{ On the question of the cost of sugar to the consuming public, I find that sugar sells in the different markets without the slightest regard to the freight rate. For example, in western territory, while the British Columbia Refinery at Vancouver pay freight rates to Winnipeg, which have varied from 78 to 89½ cents, effective March 15 last, that company sells its sugar in Winnipeg at the same price that it sells it in Vancouver, where it pays no freight rate at all. As a matter of fact, in certain instances, and for practically short periods, sugar was actually sold in Winnipeg at a less price than in Vancouver.

In the east the situation is very similar. The fact is admitted by everybody. The notes of evidence covering the question read:—

"The CHIEF COMMISSIONER: We had better have that cleared up while we are at it. As I understood from the evidence given before, both at Ottawa and Winnipeg, the question was a trade question, having regard to the rights of these different refineries, and their right to live (if I might loosely express it), and that it had nothing whatever to do with the public as such; in other words, that sugar prices in this country bore no relation whatever to freight rates. If that is incorrect I would like to have it cleared up.

"Mr. O'GRADY (of the St. John Refinery): I think that is quite correct.

"The CHIEF COMMISSIONER: I think we had illustrations given that sugar in some instances was dearer at the point where it was refined than it was at distant points where there was competition with other factories. Is that right?

"Mr. O'GRADY: I think that is right.

"Mr. CHRYSLER (counsel for the eastern refineries): I did not make any point about that. I do not know that our price has been limited in any way, or that it has been fixed in relation to the freight rate.

"The CHIEF COMMISSIONER: Well, Mr. O'Grady has covered the point.

"Mr. CHRYSLER: Other agencies have been at work fixing prices beside the refineries, but I do not know enough about it to discuss that. I mean the grocers fix prices, but how I do not know.

"The CHIEF COMMISSIONER: The only thing I wanted to know was whether the public was interested in this, from a cost-of-living standpoint.

"Mr. CHRYSLER: I think not. It was a question of our right to exist in competition with Montreal refineries."

The interests of the public, having regard to a proper supply of sugar, is also not at stake. The sugar output does not at the present time depend on refinery capacity. The sugar shortage is not in the slightest related to any question of capacity; it is related entirely to scarcity of the raw article.

Allotments of the raw article have been made by the Canada Food Board. Under these allotments the Canada Sugar Company at Montreal receive 70,400 long tons; St. Lawrence Sugar Refineries, Montreal, 67,200 long tons; Dominion Sugar Company, Wallaceburg, 38,400 long tons; Acadia Sugar Refining Company, Halifax, 41,600 long tons; Atlantic Sugar Refinery, St. John, N.B., 51,200 long tons.

This allotment falls far short of the full melting capacity. In the case of the Atlantic Sugar Refinery, as an instance, this refinery has a capacity of six million pounds a week, and under its allotment is producing only two million pounds a week.

As a further result, no one refinery, or one set of refineries, is able to increase its output at the present time at the expense of its competitor.

The Canada Sugar Refining Company of Montreal sell sugar at some 45 cents a hundred less than their competitors. For example, their sugar sold in Toronto the first of the month at \$8.76 a hundred, while the St. Lawrence Sugar Refinery of Montreal and both the eastern refineries sold at \$9.21. Their Port Hope price was \$8.90 while the Port Hope price of the three other refineries was \$9.35. The Canada Sugar Refining Company are not selling one pound more sugar than they would sell if they sold at the same price as their competitors. The whole situation is artificial and will in all probability so remain until the war is over, unless a great change takes place in the supply of raw material before that event.

Under the McAdoo order sugar rates are dealt with in such a way as not only to increase the revenues of carriers, but also to place the movement of sugar on a relatively fair basis, having regard to the value of the service rendered and the charges exacted on other commodities.

The main report, dated July 25, 1918, in which the Order in Council now appealed against was made, reads:—

"Sugar classifies fifth-class, and only moves on fifth-class, in so far as the all-rail movement from Eastern to Western Canada is concerned. The district covered by sugar commodity tariffs stops at North Bay, on the Grand Trunk, and at Sudbury, on the C.P.R. The effect of the McAdoo order is to increase the rates on sugar between points in the United States formerly covered by commodity tariffs to a greater extent than 25 per cent. For example: the former commodity rate on sugar from New York to Detroit was 24½ cents. Under the McAdoo order it now becomes 35, an increase of 42 per cent. From New York to Chicago the commodity rate was 31½; new rate, 45 cents; a percentage increase of 43 per cent. The New York to St. Paul and Duluth rate was 38½ cents; new rate, 65 cents; a percentage increase of 69 per cent.

"As the commodity rates in Eastern Canada were not based on any fixed proportion of the fifth-class, the percentage of the resulting increase would change in almost every instance. As similar increases were made in both countries before the McAdoo order, the parity of treatment in increases will be obtained by providing for an increase of 25 per cent, except that in Canada, where the Canadian Freight Classification applies, the fifth-class rate as increased would be substituted.

"The effect of the McAdoo order on the sugar movement from Montreal to Toronto would be as follows:—

"The present rate is $18\frac{1}{2}$ cents per 100 pounds, while the present fifth-class rate is $26\frac{1}{2}$ cents, and as increased under the McAdoo order would be 33 cents. As a result the rate would be increased $14\frac{1}{2}$ cents per 100 pounds, or 78.3 per cent.

"The increase would make the freight costs 0.33 cents per pound as against 0.185 cents per pound, and on a 10-pound purchase by the consumer 3.3 cents as against 1.85 cents."

It is unnecessary to refer in detail to the more recent report made on the complaint of the Toronto Board of Trade, but merely to repeat that an anomaly existed in that sugar moved on a low commodity basis from Montreal and eastern refineries in the more confined area, bounded by North Bay on the Grand Trunk and Sudbury on the Canadian Pacific, while, in violation to all proper practice the longer haul took a higher basic charge, namely, the appropriate fifth-class classification. The order simply removes rate preferences and puts the sugar movement where it legitimately belongs.

The foregoing considerations apply to the sugar situation generally. The complaint of the eastern refineries and the movement of sugar from the Maritime Provinces to Montreal and points west is now considered.

The tariff situation is as follows:—

	Cents.
St. John to Montreal, rate effective prior to March 15..	18
" " effective March 15..	$20\frac{1}{2}$
" " present rate..	42
Halifax to Montreal, prior to March 15..	19
" " effective March 15..	22
" " present rate..	43

The initial rates were frankly admitted to be rates that were put in simply for the purpose of helping the eastern refineries. They were not justified and could not be justified on any system of rate-making, bearing in mind either a proper remuneration to the carrier or a fair proportion of the cost of transportation as against rates exacted from other shippers.

These low rates were first put in from Halifax. The Intercolonial management have put in an arbitrary rate basis between Halifax and St. John under which St. John takes a rate below Halifax of one cent per hundred pounds on all commodities moving in carlots. The history of the fifth-class rate under which sugar would normally move from Halifax to Montreal, is as follows:—

	Cents.
Fifth-class rate, Halifax-Montreal, when first sugar rate made.. . . .	25
" " " 1911..	28
" " " 1916..	30
" " " March 15..	$34\frac{1}{2}$
" " " present rate..	43

Both the low sugar commodity rates and the fifth-class rates are Intercolonial rates. The Canadian Pacific meets the Intercolonial-St. John commodity rate. The shorter mileage from St. John to Montreal is that of the Canadian Pacific, of 487 miles. The actual mileage on the Intercolonial is 735 miles.

While, for purposes of rate-making, railway companies are entitled to construct their rates on the shorter mileage basis and the shorter mileage basis governs, the mere fact there is a shorter mileage basis is not the slightest justification for putting in an unremunerative rate. The principle in the present case would go no further than to permit the Intercolonial, with its longer mileage to meet the rates published by the Canadian Pacific and applicable to its shorter line. The Canadian Pacific supports and strongly urges the continuance of the rates reserved under the Order in Council.

The old commodity rates, as already stated, cannot be justified on any business railway principle. The old St. John rate of 18 cents yielded to the Intercolonial 0.4898 cents per ton per mile. The 20½-cent commodity rate which was effective prior to the effective date of the Order in Council yielded a return of 0.5578 cents per ton per mile.

It was sought to justify the rates for the purpose of building up industries in the Maritime Provinces. These provinces, however, are equally interested in the production of coal and lumber. The rate on bituminous coal from Stellarton, N.S., to Montreal, effective prior to August 12 last, was 17 cents; the mileage involved is 811 miles; and the resultant rate per ton per mile is 0.419 cents; while sugar moving on a 19-cent rate from Halifax to Montreal, involving a mileage of 831 miles, gives a return of 0.457 cents, and on the increased commodity rate of 22 cents a hundred, yields a rate per ton per mile of 0.529 cents.

The value of coal moving from Stellarton may to-day be put at \$10 a ton. The value of a ton of sugar can conservatively be placed at \$180.

Coal rates do not stand by themselves. The price of lumber per ton is also very much less than sugar; on the movement from Elmsdale to Montreal lumber has a commodity rate of 18 cents, the mileage 801, and the resultant rate per ton per mile 0.449 cents.

To get nearer to the St. John movement, the lumber rate from St. John to Montreal is 16 cents, the actual mileage 731, and the resultant rate per ton per mile 0.437 cents.

Iron and steel constitute a very important movement and a great industry of the Maritime Provinces. The general iron and steel rate from New Glasgow to Montreal was 43½ cents per hundred, a rate more than double the sugar rate, and yielding, on the mileage involved of some 804 miles, 1.08 cents per ton per mile.

These illustrations are not given for the purpose of attacking either the coal, lumber, or iron and steel rates as abnormally high. As a matter of fact they are not. The illustrations merely emphasize the fact that there was no justification for the low sugar commodity rate that could be made from any legitimate railway standpoint. I need only point out that with practically the same rate on sugar and coal, while the sugar takes generally a fifth-class rating, coal belongs to the lowest classification of all, namely tenth.

In view of the suggestion that notwithstanding the abnormal railway costs of today that the Intercolonial should put in a particularly low rate, I now consider the question as to whether the Intercolonial can afford to make sacrifices in its revenue or not. Comparisons based upon different rates per ton per mile are merely illustrative; they are not absolute. A company whose business consists of an abnormally large proportion of carload movement as against a company the majority of whose business consists in L.C.L. movement, can carry on business successfully at a very much lower rate per ton per mile.

Again, a much higher per ton per mile return must be earned on a system whose average haul is short than need be earned by a company whose haul is long. For example, the operations of the Canadian Pacific are much more profitable than those of the Grand Trunk, yet the rate per ton per mile of the Canadian Pacific as given in the Railway Statistics is 0.676, while the Grand Trunk's amounts to 0.738. The Canadian Pacific, however, enjoys an average haul of 477 miles, while the Grand Trunk's is but 195 miles. Subject to these qualifications and applying the rate as

given, I find from the Railway Statistics of 1917 that the ton miles on the Intercolonial amount to 1,900,097,294. The rate per ton per mile of the Intercolonial is shown as 0.576, with a resultant total earning of \$10,946,071.

The following table applies to the Intercolonial's total of ton miles and the ton-mile earnings not only of the Intercolonial but of the different systems:—

	Rate.	Results.
Intercolonial.. . . . .	.....	\$10,946,071
“ freight carried at C. N. R. rate of.. . .	0.688	13,072,669
Canadian Pacific Railway..	0.676	12,844,657
Grand Trunk..	0.738	14,022,718
Average Canadian..	0.690	13,110,671

It is perfectly apparent that the Intercolonial returns are abnormally low. The increases which the adoption of the other rates per ton per mile would yield are as follows:—

Per Ton per Mile Basis—	Increased Revenue.	Increase in Per cent.
Canadian Northern..	\$2,126,598	19
Canadian Pacific..	1,898,586	17
Grand Trunk..	3,076,647	28
Average..	2,164,600	19

The average haul on the different systems, as shown by the Statistics, work out as nearly as may be as follows:—

	Miles.
Intercolonial..	266
Canadian Northern..	319
Canadian Pacific..	477
Grand Trunk..	195
Average, all lines..	255

As a ton mile rate must increase with a decreasing mileage, it would not be at any rate unreasonable to compare the Intercolonial ton mile rate with the average rate in Canada, the average haul in Canada being 255 miles as against 266 miles on the Intercolonial, and on this basis the earnings of the Intercolonial are entirely too low.

The status of the Intercolonial can also be approached from the basis of its operating ratios in comparison with those of other lines. I again use the Statistics of 1917. The ratios are as follows:—

Intercolonial..	90.9
Canadian Northern..	71.7
Canadian Pacific..	65.7
Grand Trunk..	71.9
Average, all lines..	71.7

These operating ratios are capable of an exact definition when the system's whole business is considered. In the absence of a system of accounting which distinguishes freight costs from passenger costs in the same way that passenger earnings are distinguished from freight earnings, the ratios can be applied only illustratively to either movement. Taking, however, the different ratios and applying them to the Intercolonial line freight movement the net freight operating revenue would vary as follows:—

At Ratio of—	Revenue.
Intercolonial..	\$ 996,092
Canadian Northern..	3,207,198
Canadian Pacific..	3,754,502
Grand Trunk..	3,185,306
Average, all lines..	3,207,198

There seems to be some issue as to what the exact operating mileage of the Intercolonial is. It is given in one figure in the statistics and in another figure in the

departmental report. For the purposes of the following table I have taken the mileage operated as 1,563, and the results of earnings per mile of line as applied to the Intercolonial and based on the foregoing table are as follows:—

	Net Freight Operating Receipts per Mile of Line.
On Intercolonial ratio.. . . .	\$ 637
" Canadian Northern ratio.. . . .	2,051
" Canadian Pacific ratio.. . . .	2,402
" Grand Trunk ratio.. . . .	2,037
" average, all lines ratio.. . . .	2,051

I do not consider at all the question as to whether the Canadian taxpayer is or is not entitled to any return from his investment in the Intercolonial, but unless that investment must constantly grow without at the same time a proportionate increase in value, substantial surpluses have each year to be earned, reserves must be set aside, or else the capital account must constantly be unduly inflated.

Railways from time to time must be practically renewed in order to keep the systems on a proper basis—I think it is practically conceded that with interest on only a 4 per cent basis 2 per cent on the actual investment ought to be yearly set aside. Eliminating all question of interest charges and payments of past deficits, the necessity of such a reserve is easily shown by taking the cost per mile of the Intercolonial to the country. In 1899 the cost per mile was \$37,957, in 1911 the cost per mile amounted to \$57,419, and the cost per mile to-day on the mileage actually owned is over \$79,000, the cost of the road to March 31, 1917, being returned as \$120,275,032.

A percentage of this increase can undoubtedly be justified, but it is equally certain that a very large percentage of it cannot be justified on any basis of normal values and business accounting.

Under the circumstances there is no question but that any rate reductions on the Intercolonial are really not made at the expense of that system, but are made at the expense of the Canadian taxpayers generally.

Mr. Chrysler urged that different treatment had been accorded under the McAdoo Order to refiners in the different districts. In this Mr. Chrysler is absolutely correct. The adoption of the fifth class was made in official classification territory. This official classification territory covers territory contiguous to Eastern Canada. He pointed out that the refiners at New Orleans were specially provided for by the McAdoo schedule and argued that their commodity rates and differentials were preserved.

The New Orleans refineries did not lie in official classification territory, consequently the matter had to be dealt with on a different basis. All the eastern refineries in Canada, however, are in the same classification territory. The results, however, in New Orleans show that increases were made on very much the same parity, although on a different basis. The evidence shows that the old rate, New Orleans to Chicago, was 24·3 cents, the new rate 45 cents, an increase of 85·2 per cent; to St. Louis, old rate, 18·3 cents, new rate 44·5 cents, an increase of 143 per cent; to Cincinnati, old rate, 19·8 cents, new rate 46 cents, an increase of 132 per cent; to East Burlington the old rate was 28·8 cents and the new rate 50 cents, an increase of 73·6 per cent.

Mr. O'Grady, of the St. John Refinery, urged that the Montreal rate should be reduced to 27 cents. He leaves the matter in this way:—

"The proposal of the railway company is 42 cents St. John to Montreal, which you think should be reduced to 27 cents. You get at that reduction by taking, as I understand you, the new New York-Montreal rate on raw sugar at 21½ cents and add to it the 5½ cents which you think you should absorb, thus making a 27-cent rate?

"Mr. O'GRADY: Yes, sir. That is the basis we have been competing on ever since we started."

While the eastern refineries are willing to accept a 27-cent rate to St. John, they insist that the differential 11½ cents should be continued on movements west. How

this would work out can be illustrated by the Toronto movement. The record covering the question reads as follows:—

"The CHIEF COMMISSIONER: Your Toronto rate to-day is what?

"Mr. O'GRADY: Thirty cents.

"The CHIEF COMMISSIONER: The Montreal rate is, what, the last rate to Toronto?

"Mr. TILSTON: $18\frac{1}{2}$ cents.

"The CHIEF COMMISSIONER: My recollection is that the Montreal to Toronto rate is $18\frac{1}{2}$ cents.

"Mr. TILSTON: That is correct.

"The CHIEF COMMISSIONER: Your rate to Toronto is 30 cents, Mr. O'Grady?

"Mr. O'GRADY: Yes, sir.

"The CHIEF COMMISSIONER: That gives you a differential, as you put it, of $11\frac{1}{2}$ cents?

"Mr. O'GRADY: Yes.

"The CHIEF COMMISSIONER: And the new Montreal to Toronto rate is what?

"Mr. TILSTON: Standard 33.

"The CHIEF COMMISSIONER: It goes 33 cents as against $18\frac{1}{2}$ cents?

"Mr. TILSTON: Yes, sir.

"The CHIEF COMMISSIONER: As I understand your submission, Mr. O'Grady, you want your St. John rate to have the same differential of $11\frac{1}{2}$ cents. That would make your St. John-Toronto rate $44\frac{1}{2}$ cents.

"Mr. O'GRADY: Yes."

It will be observed that the new St. John rate of $44\frac{1}{2}$ cents would be made up by the continuance of the old arbitrary or differential of $11\frac{1}{2}$ cents from St. John to Montreal and the addition of the new 33-cent rate to Toronto. The result is that while the rate from Montreal to Toronto would be increased by approximately 80 per cent, there would be no increase whatever in that portion of the through rate which is represented by the St. John-Montreal haul, although there is of course a substantial increase, treating the matter in percentages, in the through rate, the increase being some 41 per cent. But the rate, St. John to Montreal, is even more out of line than the Montreal to Toronto rate. Both were unduly low, but the Inter-colonial rate was much more out of line.

The weaknesses and injustices of the tariff situation would be merely accentuated by the adoption of this suggestion. Traffic is infinitely heavier between Montreal and Toronto and points west than it is between St. John and Montreal. Usually rates relate to traffic, to its volume, and to its earnings. To carry out Mr. O'Grady's suggestion would be to do violence to all cardinal principles. Further, if a proportionate rate basis was put in on any such theory, the Dominion Sugar Refineries situate at Wallaceburg, Chatham, and Kitchener, with far shorter hauls to Toronto, would naturally demand similar treatment to that which St. John would receive.

The Montreal refiners, as well as the Dominion Sugar Company, do not object to the advance in rates, but they are insistent that if concessions are given to one refiner they should be given to all and that the inequalities of the past cease.

Mr. Hauson, who appeared for the Dominion Sugar Company, is reported as follows:—

" I would like to state that our raw sugar rate from New York to Wallaceburg or Chatham is 27 cents, which I believe is as high or higher than the rate paid by any of the other Canadian refiners.

"I just wish to endorse the statements made by Mr. Tilston. Our company is fully in accord with those sentiments. We consider that it would be a mistake to re-open the Order of the Board of July 27.

"I would like further to add that should the Atlantic seaboard refineries be given any consideration by the Board, we would respectfully request the Board to give us similar consideration from Wallaceburg and Chatham to Montreal and points east."

The statements made by the Montreal refiners are to the effect that the Order for the first time gives them fair rates having regard to hauls from other refineries, and that for the first time they properly enjoy their geographical and commercial position, not only as against Atlantic refineries but also as against western refiners.

The claim is, however, advanced that because investments have been made in refineries in Halifax and St. John when a certain scale of freight rates were in force, the freight rate situation cannot be disturbed; that the relationship of rates, not in percentages but as to the actual spread, must remain constant.

This argument cannot be regarded as sound either under the provisions of the Railway Act or from any accepted economic commercial standpoint. There is only one thing certain about freight rates and that is that the carrier, under the Act, will not be permitted to make an undue profit. Just as soon as rates are unreasonably high they must be reduced, and, conversely, just as soon as rates are unreasonably low they ought to be raised to a fair, equitable, and just basis without regard to one section of the country or the other, but having regard to the inhibitions of the Railway Act which prohibit one locality being discriminated against in ease of another.

To accept the proposition, as a logical result the principle would not only apply to railways but would also mean that the industry's tax rate could not be increased and its cost of doing business locally ought not to be advanced. As a further corollary, any protective customs tariff in force when the investment was made must always be regarded as fixed, unless changed in the interests of the industry as against its foreign rival.

Mr. Chrysler argues that the Intercolonial is removed from the inhibitions of the Railway Act. In this he is absolutely right. The effect of the argument is that any illegal and improper preference under the Railway Act may safely be practised by the Intercolonial. The position used to be just the same as far as private railway companies were concerned before the Act was passed. Discriminations and preferences could be and were from time to time practised.

I do not for one moment, however, suppose, as Parliament by the Railway Act has adopted the principles of equality in railway rates not only as between shippers but as between localities, that these principles ought not to be considered because the Intercolonial as well as a private corporation is involved.

Dealing with the matter entirely as a railway question, there is no just ground from which the Halifax and St. John refineries can escape paying the appropriate fifth-class rates and contributing, in equal proportions with the other refineries, to the cost of the services which they enjoy, differing as that cost must differ having regard to the length of the haul.

If there should be a different rate system adopted in the different localities for the transportation of sugar, from a railway standpoint the lower rate basis would have to be given to those territories in which traffic and railway profits are the greater. Railway earnings are much larger in the prairie provinces and in Ontario than they are in New Brunswick and Nova Scotia, but in my view there is no question but what a common basis should apply in the territories in question.

I have so far dealt with the matter on a railway basis pure and simple. As I see it, this basis is not the only basis which of necessity should control the situation. The Order in Council is the result of war troubles and war expenditures. Both the St. John and the Halifax refineries have had an unduly large share of the war burden thrown upon them. Halifax and St. John have geographically, under ordinary business conditions, certain advantages which Montreal has not. On the other hand, Montreal has advantages which they have not. St. John, for example, is still getting a packet

service for 25 per cent of its raw sugar without any additional charge over and above the 50-cent New York ocean rate from the West Indies. In normal times its rate on the balance of its raw material is 6 cents over New York, with the result that in so far as 25 per cent of its sugar is concerned it is on the New York basis, and as to 75 per cent of it, 6 cents over.

In so far as its whole supply is concerned it would, therefore, average $4\frac{1}{2}$ cents over New York. As a general thing Montreal buys its raw sugars in the New York market, although in the past it has got some raw sugar direct. The present New York rail rate to Montreal is $21\frac{1}{2}$ cents, but the extra 6-cent rate which is charged on the boats from New York to St. John, as the result of the war and boat shortage, has been increased to 20 cents; so that as a consequence at St. John to-day, instead of paying an average of $4\frac{1}{2}$ cents over New York, it pays 15 cents, a difference of $11\frac{1}{2}$ cents a hundred.

While no sugar now moves from St. John to Montreal, under the policy enforced as a result of which St. John gets the benefit of as low an import rate as the lowest port in American territory, and thus obtains just as much traffic as is possible to secure for it, the St. John-Montreal rate on raw sugar is but 19 cents. It may be noted that there is a shrinkage from 106 pounds to 100 pounds in refining the sugar. I at one time thought that the rates on refined sugar might be graded in relation to the raw sugar, properly weighing the increased value of the commodity and the shrink in the material. I find, however, that the prices vary so much from time to time that it would be impracticable to so base the rate. The present price of raw sugar in Montreal may be taken at 5 cents, while the refined sugar may be taken at 9 cents, although the average is somewhat higher. It should further be borne in mind that on no other commodities are rates so graded.

With St. John obtaining its raw sugar on a much lower basis than Montreal and enjoying the benefits of the export business, these advantages may well offset, and probably do offset, the fact that Montreal is much nearer the larger consuming centres of the country. The movement to the large consuming western territory can best be illustrated by the rates to Winnipeg, effective under the Order in Council. The rate, Montreal to Winnipeg, is 87 cents, and from St. John to Winnipeg is \$1.03 $\frac{1}{2}$. Under normal conditions transportation costs over New York work out, as between the rival refineries, as follows:—

	St. John Refinery.	Montreal, via St. John.
Freight on raw.. . . .	\$ 4 50	\$ 23 50
“ refined.. . . .	103 50	87 00
Total.. . . .	<u>\$108 00</u>	<u>\$110 50</u>

For the Toronto market the position is:—

	St. John Refinery.	Montreal.
Freight, raw.. . . .	\$ 4 50	\$ 23 50
“ refined.. . . .	50 50	33 00
Total.. . . .	<u>\$55 00</u>	<u>\$56 50</u>

The Montreal cost on the raw material over New York is made up of the 4·50 cent St. John over New York plus the St. John import rate of 19 cents. As Montreal, as a matter of fact, buys its raw sugar in the New York market and the rail rate to Montreal is $21\frac{1}{2}$ cents, the real relative position in these two large typical consuming centres is as follows at Winnipeg: St. John freight, \$1.08; Montreal freight, \$1.08·50; at Toronto, St. John freight, 55 cents, and Montreal freight, 54 cents. These results could not have been made fairer if the Order in Council had been considered from the refiners' standpoint, apart from all question of railway necessity.

rates were equalized at Portage la Prairie. The rates referred to as equalizing at that point were all-rail rates, but as a matter of fact the rail and water breaking point, which constitutes the real movement, was at Wapella, a station just past the Manitoba boundary and in Saskatchewan.

The complaints, however, have continued, and the matter was pending for judgment at the time the Order in Council was made.

Under the rate basis applicable in the different territories under consideration, the prairie territory enjoying a lower rate basis than British Columbia (owing to the great cost of railway construction and of railway operation in British Columbia), the all-rail rate to-day from Fort William west would meet the rate from Vancouver east between Medicine Hat and Calgary, while the rate from Montreal, if the commodity moved on the lower water basis in eastern territory and thus be a rail-lake and rail movement, would now break at about Swift Current, Sask.

The eastern refineries have always argued that they were entitled to the rates being so adjusted. On the other hand, the British Columbia refineries have always taken the position that their particular movement ought not to be considered on a mileage basis and that the rate, having voluntarily been put in by the Canadian Pacific, should stand.

In the past the Canadian Pacific was the only company interested. It certainly required no increased revenues. The Canadian Northern to-day is operating out of Vancouver. Its deficit for the current year will not be short of ten million dollars, and to this deficit would have to be added the annual cost of the payment the Government makes under the arbitration proceedings, which cannot well be stated as being less than \$550,000. But the Canadian Northern rates cannot be raised unless the rates of the Canadian Pacific are also raised, and the earnings of the Canadian Pacific to-day are not those it was enjoying when the former complaint was heard.

It is, however, in the interests of the railways themselves, as well as in the interests of the public, that a substantial movement of sugar should be made from the West east. To break rates at Bassano, which is practically Calgary, would unduly and unfairly shut the Vancouver refineries out of a market which is contiguous to it and hand that market over to competitors situate many hundreds of miles farther away.

The position is not that of the Nova Scotia and New Brunswick refineries, who seek to have an added mileage of 487 miles in part absorbed by the railways. The position is reversed.

Under all the circumstances, recognizing on the one hand the absolute necessity of an increase in rates, and on the other hand that the markets of the British Columbia refineries should not by a change of railway rates be largely wiped out, I beg to recommend that Regina, which is 388 miles east of Bassano, be made the breaking point, and that the requisite amending Order be made. In order to cover the situation the Order should read as follows:—

The commodity rates to be charged upon sugar, in carloads, from Vancouver to destinations in Alberta, Saskatchewan, and Manitoba shall be as follows:—

(a) To Regina, Lanigan, Humboldt, and Melfort, the rail-lake-and-rail fifth-class rates contemporaneously in effect from Montreal to the same points.

(b) To Winnipeg, the percentage of the fifth-class rate from Vancouver to Winnipeg equivalent to the ratio of the commodity rate from Vancouver to Regina to the fifth-class rate from Vancouver to Regina.

(c) Subject to the said rates as maxima, the commodity rates to destinations intermediate to the aforesaid on the direct lines of transit shall be reasonably graduated until they merge into the fifth-class rates from Vancouver.

(d) To destinations off the aforesaid direct lines of transit the commodity rates shall not exceed those for equivalent direct line distances applied to the shortest practicable routes, with reasonable additions where the direct line mileage is insufficient for the purpose.

(e) During the existence of the class freight tariffs from Vancouver and Montreal in effect at the date of this Order the commodity rates from Vancouver, graduated

as aforesaid, shall not exceed 94 cents to Banff, \$1 to Calgary and Edmonton, \$1.05 to Lethbridge, \$1.21 to Saskatoon, and \$1.26 to Prince Albert, per 100 pounds respectively.

H. L. DRAYTON.

OTTAWA, August 20, 1918.

P.C. 2080.

AT THE GOVERNMENT HOUSE AT OTTAWA,

SATURDAY, the 24th day of August, 1918.

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

Whereas there has been laid before His Excellency the Governor General in Council a report of the Chairman of the Board of Railway Commissioners for Canada upon certain complaints having particular regard to the spread in the railway freight rates on sugar as filed by Order in Council (P.C. 1863), of 27th July, 1918;

And whereas it is recommended in the said Report that the said rates be modified;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Railways and Canals, pursuant to the advice of the Chairman of the Board of Railway Commissioners for Canada, and under the authority of the War Measures Act, 1914, is pleased to order, and it is hereby ordered, that the commodity rates on refined sugar, in carloads, shall be as follows, namely:—

To Montreal for local deliveries; 32 cents per 100 pounds from St. John, N.B., and 33 cents per 100 pounds from Halifax.

To destinations in Canada, west of Montreal; the 5th class rates current from Montreal, with the addition of 14½ cents per 100 pounds from St. John and 15½ cents per 100 pounds from Halifax.

From Vancouver, B.C., as follows, namely:—

(a) To Regina, Lanigan, Humboldt and Melfort, all in the province of Saskatchewan, the rail-lake-and-rail 5th class rates contemporaneously in effect from Montreal to the same points.

(b) To Winnipeg; the percentage of the fifth class rate from Vancouver to Winnipeg equivalent to the ratio of the commodity rate from Vancouver to Regina to the fifth class rate from Vancouver to Regina.

(c) Subject to the said rates as maxima, the commodity rates to destinations intermediate to the aforesaid on the direct lines of transit shall be reasonably graduated until they merge into the fifth class rates from Vancouver.

(d) To destinations off the aforesaid direct lines of transit the commodity rates shall not exceed those for equivalent direct line distance applied to the shortest practicable routes, with reasonable additions where the direct line mileage is insufficient for the purpose.

(e) During the existence of the class freight tariffs from Vancouver and Montreal in effect at the date of this Order the commodity rates from Vancouver, graduated as aforesaid, shall not exceed 94 cents to Banff, \$1 to Calgary and Edmonton, \$1.05 to Lethbridge, \$1.21 to Saskatoon, and \$1.26 to Prince Albert, per 100 pounds respectively.

His Excellency the Governor General in Council is further pleased to order that the aforesaid rates shall come into force and have effect from St. John and Halifax on and after the 12th day of September, 1918, and from Vancouver on and after September 23, 1918, by publishing and filing on one day's notice with the Board of Railway Commissioners for Canada, and shall remain in force for the duration of the present war or until further ordered.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

ORDER No. 27550.

In the matter of the complaint of David Spencer, Limited, of Vancouver, against the interpretation placed by the railway companies on item No. 240, page 59, Canadian Freight Association Westbound Tariff No. 1, reading, "inter alia"—"Hats and caps (other than millinery) taking first-class rating in current Canadian Freight Classification" as applied to shipments of women's hats with plain band and binding only from Eastern Canada to Vancouver.

File No. 19367.76.

THURSDAY, the 1st day of August, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Vancouver, June 6, 1918, the complainant, the Canadian Pacific, the Canadian Northern, and the Grand Trunk Pacific Railway Companies being represented at the hearing, and what was alleged, and upon reading the report of the Chief Traffic Officer of the Board,—

It is declared: That the proper rates on the shipments in question were the rates appearing in Item 240 of the Canadian Freight Association's Westbound Tariff No. 1, effective September 20, 1916.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27540.

In the matter of the application of the Grand Trunk Railway Company of Canada, for an Order amending the Order of the Board No. 26798, dated December 4, 1917, requiring inter alia that each of the crossings of the Devonshire Road by the Grand Trunk Railway and the Père Marquette Railroad, in the town of Walkerville, Ont., be protected by gates, and apportioning the cost of installation and maintenance.

File No. 21713.

FRIDAY, the 2nd day of August, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, the Père Marquette Railroad Company consenting,—

It is ordered: That the Order of the Board No. 26798, dated December 4, 1917, be, and it is hereby, amended by inserting after the word "cost" in the first line of paragraph (3) of the Order the words "of new gates on the Grand Trunk Railway and".

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27546.

In the matter of the application of residents of Tweed, Ont., for an Order directing the Canadian Pacific Railway Company to re-establish its local train service between Tweed and Toronto, Ont.

File No. 27563.67.

FRIDAY, the 2nd day of August, A.D., 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, June 24, 1918, the township of Tweed, the applicants, and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged; and upon reading the further submissions filed,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, directed to re-establish the local train service in effect between Tweed and Toronto prior to January, 1918; such train service to be provided each year from the 15th day of April to the 1st day of December.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 247.

In the matter of the adoption of a standard signal at railway grade crossings protected by watchmen.

File No. 28428.

TUESDAY, the 6th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Asst. Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

By Circular No. 156, dated January 15, 1918, addressed to railway companies subject to the jurisdiction of the Board, the said companies were directed to consider the adoption of a metal disc to be used as a standard at said crossings and to file their comments with the Board within thirty days from the date of the circular.

Upon reading the replies filed by the railway companies affected, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the railway companies within the legislative authority of the Parliament of Canada be, and they are hereby, required and directed to adopt and put into use at all grade crossings protected by watchmen during the daytime a metal disc, 16 inches in diameter, with a short handle having a white background with the word "STOP" in large, black letters and a black border.

2. That rule 33 of the General Train and Interlocking Rules which provides that "watchmen stationed at public crossings must use a green signal to prevent persons and vehicles from crossing the track when trains are approaching" be amended to conform with the standard hereby directed to be adopted.

H. L. DRAYTON,
Chief Commissioner.

ORDER No 27542.

In the matter of the application of the Edmonton, Dunvegan, and British Columbia Railway Company for an Order varying the terms of its Live-stock Contract Form approved by the Board by Order No. 26167, dated May 31, 1917, by reducing the maximum liability of the company for each animal carried to one-half the amount stipulated in the said contract form in connection with certain exceptional movements of live-stock.

File No. 16749.51.

SATURDAY, the 10th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading the application, and what is alleged in support thereof,—

It is ordered: That in consideration of the carriage by it of cattle and sheep from the parched districts to the south to pastures contiguous to its railway at half its ordinary rates, or an approximation thereto, from Edmonton to its appropriate stations, the Edmonton, Dunvegan, and British Columbia Railway Company be, and it is hereby, authorized by special tariff in respect to such shipments to vary the terms of its said Livestock Contract Form limiting its liability as follows, namely:—

No head of cattle, except calves, exceeds. \$ 40 in value.

No head of sheep exceeds. 5 "

And that the said contents of no car exceeds. . . . 600 "

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27543.

In the matter of the application of the Brotherhood of Locomotive Engineers for an Order directing that all switch and transfer engines be equipped with wedge tanks low enough for enginemen to see over and with a headlight on the rear.

File No. 28496.

SATURDAY, the 10th day of August, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

Hon. W. B. NANTL, *Dep. Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, May 7, 1918, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive

Firemen and Enginemen, the Grand Trunk, Canadian Pacific, Canadian Northern and Toronto, Hamilton, and Buffalo Railway Companies, and the New York Central and Michigan Central Railroad Companies being represented at the hearing, and what was alleged; and upon reading the further submissions filed, and the report of an Inspector of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

GENERAL ORDER No. 246.

In the matter of the eastbound transcontinental freight rates, and the powers conferred upon the Board under section 323 of the Railway Act;

And in the matter of the application of W. C. Campbell, secretary, Canadian Freight Association, Winnipeg, on behalf of the railway companies engaged in transcontinental transportation from Pacific Coast terminals in British Columbia to eastern Canada, for permission to increase their so-called commodity rates on not less than five days' notice.

File No. 28678.

MONDAY, the 12th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Whereas the eastbound transcontinental freight rates on specific commodities from points in British Columbia recognized as Pacific Coast terminals to destinations in Eastern Canada have been in the past and are now lower than the regular scale of rates under the Canadian Freight Classification, and are related to the rates on like commodities when shipped from the corresponding terminals in the contiguous State of Washington to eastern destinations;

And whereas by Order of the Director General of the United States Railroad Administration the United States carriers increased their freight rates, including their said transcontinental rates, from June 25, 1918, by 25 per cent, subject to certain modifications with respect to specific commodities, and because of the competitive character of the traffic it is expedient to continue at least the said relationship,—

It is ordered: That the railway companies in Canada engaged in eastbound transcontinental traffic be, and they are hereby, permitted to increase their present commodity rates from the said Pacific Coast terminals in British Columbia to destinations in Eastern Canada, subject, however, as a maximum to the lowest rates now in effect from the corresponding terminals in the State of Washington on like commodities to corresponding eastern destinations, and that the rates so increased be

permitted to become effective not earlier than the ninth day of September, 1918, upon not less than five days' notice to the Board and to the shipping public by filing and posting in the manner prescribed in the Railway Act.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27558.

In the matter of the complaint of farmers and milk shippers in the vicinity of Smithville, Ont., against the treatment of the Toronto, Hamilton and Buffalo Railway Company in connection with the early morning train taking on milk shipments for Hamilton.

File No. 24531.

TUESDAY, the 13th day of August, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the railway company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Toronto, Hamilton and Buffalo Railway Company be, and it is hereby, required to stop its train No. 71 at Smithville, Ont., for milk shipments, unless such train is so late that it runs on the time of train No. 75.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27551.

In the matter of the application of the municipal corporation of the township of Colchester South, in the province of Ontario, hereinafter called the "applicant," under section 237 of the Railway Act, for authority to construct a highway crossing over the Pere Marquette Railroad at Oak street, in the village of Harrow, Ont., as shown on the plan and profile, dated Windsor, March 11, 1918, on file with the Board under file No. 27050.

WEDNESDAY, the 14th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Windsor, June 26, 1918, the applicant and the railroad company being represented at the hearing, and what was alleged; and upon the report of an Engineer of the Board, concurred in by its Assistant Chief Engineer,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27557.

In the matter of the application of the Beverley Coal Company, Limited, hereinafter called the "applicant company," for running rights over a portion of the spur line between the main line of the Grand Trunk Pacific Railway Company and the Humberstone Coal Company's line to the point of the proposed spur into the Beverley mine, and for an Order fixing the terms of the user.

File No. 19653.1.

WEDNESDAY, the 14th day of August, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, June 11, 1918, the applicant company, the Grand Trunk Pacific Railway Company, and the Humberstone Coal Company being represented at the hearing, and what was alleged, and upon reading the further written submissions filed,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27559.

In the matter of the Order of the Board No. 25724, dated December 15, 1916, authorizing the Canadian Northern Saskatchewan Railway Company (Wroxton Westerly Branch) to construct a transfer track between its railway and the Canadian Pacific Railway in the northwest quarter of section 36, and the northeast quarter of section 35, township 25, range 4, west of the second meridian, at Yorkton, Sask.

And in the matter of the application of the Canadian Northern Saskatchewan Railway Company for an Order apportioning the cost of the said transfer track.

File No. 6713.127.

WEDNESDAY, the 14th day of August, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Regina, October 18, 1917, and Winnipeg, October 19, 1917, the applicant company and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged, and upon reading the further submissions filed,—

It is ordered: That the cost of installing the transfer track at Yorkton, Sask., authorized under the said Order No. 25724, dated December 15, 1916, be, and it is

hereby, apportioned as follows, namely: Twenty-five per cent to be paid by the Canadian Pacific Railway, and seventy-five per cent by the Canadian Northern Saskatchewan Railway Company.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27568.

In the matter of the complaint of the Minnesota and Ontario Power Company, of Internaional Falls, Minnesota, against the increased rates on pulpwood from stations on the Canadian Northern Railway to International Falls as shown in the Canadian Northern Railway Company's tariff W-2051, C.R.C. W-1101, effective May 18, 1918.

File No. 26901.7.

FRIDAY, the 16th day of August, A.D. 1918.

D'ARCY SCOTT, *Asst. Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held at Fort Frances, June 18, 1918, the complainant and the railway company being represented at the hearing, and what was alleged, and upon the report of the Chief Traffic Clerk of the Board,—

It is ordered: That the complaint be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

CIRCULAR No. 169.

File No. 6623. Equipment Returns.

July 18, 1918.

Referring to the Board's Circular No. 85, this is to advise that the monthly statement of cars held for repairs may now be discontinued, as this information is now required to be filed under Circular No. 153. The filing of the semi-annual equipment report must, however, be continued, same being promptly mailed to the Chief Operating Officer of the Board.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

CIRCULAR No. 170.

August 13, 1918.

File 28840, Automatic Train Stop.

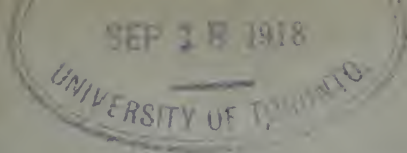
In view of the frequency of accidents, as shown by reports made to the Board from time to time, indicating that some grave consideration should now be given by Canadian railways to the question of the advisability of adopting an effective automatic train stop device, the Board, in full realization of the necessities of the situation brought to its attention, desires an expression of the views of each railway company under its jurisdiction upon the subject after full consideration and investigation has been given by the railways.

It is suggested that the Canadian Pacific, Grand Trunk, Michigan Central, Canadian Northern, St. Lawrence & Adirondack, Grand Trunk Pacific, and Toronto, Hamilton & Buffalo Railway Companies should appoint a special committee to consider the matter, a report as to progress to be made to the Board within 90 days from this date.

By order of the Board,

A. D. CARTWRIGHT,

Secretary.



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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, September 15, 1918

No. 13

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ORDER No. 27588.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 258 of the Railway Act, for approval of the location and detail plans of its proposed new station and facilities at Glen Robertson, in the province of Ontario, on file with the Board under file No. 28294.

TUESDAY, the 13th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, July 9, 1918, the applicant company and the township of Lochiel being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Engineer and the Chief Operating Officer of the Board,—

It is ordered: That the location and detail plans of the applicant company's proposed new station and facilities at Glen Robertson, Ont., on file with the Board under the said file No. 28294 be, and they are hereby, approved.

H. L. DRAYTON,

Chief Commissioner.

GENERAL ORDER No. 248.

In the matter of the General Order of the Board No. 188, dated April 23, 1917, approving regulations for the Uniform Maintenance of Way Flagging Rules for Impassable Track and General Order No. 216, dated January 24, 1918, further defining "Frequent Service."

And in the matter of the application of the Canadian Railway War Board for an order amending said Order No. 188 to provide for authority to use the Brennan Signal, so-called, or a device of a similar character in lieu of manual flagging required under said order.

Files Nos. 4135-25 and 4135-44.

MONDAY, the 19th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. MCLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, June 4, 1918, in the presence of counsel for the Canadian Pacific, the Grand Trunk, and the Canadian Northern Railway Companies, and the Michigan Central Railroad Company, the Brotherhoods of Locomotive Engineers and Firemen being represented at the hearing, no one appearing for the applicant Railway Board, and what was alleged; and reading the written submissions filed in support of the application and on behalf of the said Brotherhoods of Railwaymen; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered:

1. That the rules approved by said General Order No. 188 be amended as follows, namely: By (a) inserting the word "main" after the word "the" in the first line and before the word "track" in the second line of rule one; (b) striking out the figure "3" before "(b)" of rule 3 (b) and the words "supported on two staffs with flag drawn out between them at right angles to the track and five feet above rail level" in lines 1, 2, and 3 of said rule, and substituting the letter "d" for the letter "a" to read "red" in the fourth line, and adding as clause "(d)" to said rule the following: "Between sunset and sunrise and during stormy, foggy or smoky weather conditions flagmen must be placed instead of the outer signals referred to in clause (b); (c) adding after the figure "2" in the first line of rule 4 the words and figures "and rule 3 (d)," and after the word "point" in the second line of said rule 4 the words "or working point signal as the case may be," making the clause read, "Trains stopped by flagmen, as per rule 2 and rule 3 (d), shall be governed by his instructions and proceed to the working point or working point signal, as the case may be, and there be governed by signal or instructions of the foreman in charge"; (d) inserting "(b)" after the figure "3" in the first line and substituting the word "has" for the word "had" in the fourth line of rule 5; (e) substituting the word "must" for the word "may" in the second line of rule 6; (f) striking out the words, "Frequent service shall mean nine or more trains per diem," on page 4 of the order; and (g) adding the following regulations after rule 7 of the order, namely:—

8. "Frequent service" shall mean nine or more trains a day, and "fast train service" shall mean a service at a speed of thirty-five miles or more an hour.

9. That the Brennan Signal device as approved by the Board, or a signal of an equally serviceable type attached to the base of the rail, to be approved by the Board, be used to display the signals directed to be provided under rules 3 (b) and 6 (Yellow Signal) of this order and rule 35 (Yellow Signal) of the Uniform Code of Operating Rules.

10. Flagmen must each be equipped for daytime with a red flag and four torpedoes, and for night-time, and when weather or other conditions obscure day signals, with a red light, a white light, four torpedoes, three red fuses, and a supply of matches.

2. That the said General Order No. 216, dated January 24, 1918, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27569.

In the matter of the application of the Canadian Northern Railway Company, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open for the carriage of traffic its branch line to Cardiff Mines, in the province of Alberta.

Case No. 3635.

WEDNESDAY, the 21st day of August, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of an engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its branch line to Cardiff Mines, in the province of Alberta, provided that the operation of its trains over the said line shall not exceed a speed of 15 miles an hour, and that the fencing be completed on its right of way by November 1, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27582.

In the matter of the application of the New Minas Fruit Company, Limited, of White Rock, Nova Scotia, for an order directing the Dominion Atlantic Railway Company to continue service on the siding of the applicant company without any change in excess of the regular freight rates and that the railway company return charges unjustly collected for the upkeep of the siding.

File No. 28529.

MONDAY, the 26th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Kentville, N.S., July 4, 1918, in the presence of counsel for the applicant company and the railway company, and what was alleged; and upon its appearing that the Board is without jurisdiction in the matter,—

It is ordered: That the application be, and it is hereby, dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27585.

In the matter of the application of the Grand Trunk Pacific Railway Company for approval of plan dated August 8, 1918, showing the proposed transfer track between the Canadian Pacific and the Grand Trunk Pacific Railways at Forrest, Man., directed to be constructed under the order of the Board No. 27456, dated July 11, 1918, on file with the Board under file No. 6713.125.

MONDAY, the 26th day of August, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board,—

It is ordered: That the plan, dated August 8, 1918, showing the proposed interchange track between the Canadian Pacific and Grand Trunk Pacific Railways at Forrest, Man., directed to be constructed under the order of the Board No. 27456, dated July 11, 1918, on file with the Board under said file No. 6713.125, be, and it is hereby, approved. .

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27608.

In the matter of the application of the Wolfville Fruit Company, Limited, hereinafter called the "applicant company," for an order directing the Dominion Atlantic Railway Company to construct, maintain and operate a siding to serve the applicant company's warehouse at Wolfville, N.S.

File No. 25384.1.

MONDAY, the 26th day of August, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held at Kentville, N.S., July 4, 1918, the applicant company and the railway company being represented at the hearing, and what was alleged; and upon its appearing that the site proposed by the railway company on its property to serve the applicant company was unsuitable for its purposes,—

It is ordered: That the Dominion Atlantic Railway Company be, and it is hereby, directed to construct, maintain and operate a siding to serve the applicant company's warehouse at Wolfville, N.S., as shown in red on the plan on file with the Board under file No. 25384.1, at no greater cost to the applicant company than it would have been called upon to bear and pay for siding accommodation had the site proposed by the railway company been used.

D'ARCY SCOTT,
Assistant Chief Commissioner.

GENERAL ORDER No. 249.

In the matter of the application of the undermentioned railway companies for approval of their Standard Freight Tariffs of Maximum Mileage Tolls.

File No. 28678.

SATURDAY, the 31st day of August, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The said standard freight tariffs having been filed on the basis prescribed by Order in Council, P.C. 1863, dated July 27, 1918,—

It is ordered: That the following standard freight tariffs of maximum mileage tolls be, and they are hereby, approved; the rate scales of the said tariffs to be published in at least two consecutive weekly issues of the *Canada Gazette* and preceded by the following notice:—

"The undermentioned standard freight tariffs having been filed for the approval of the Board of Railway Commissioners for Canada, and being found by the Board to be in accordance with Order in Council, P.C. 1863, dated July 27, 1918, and having been approved by the General Order of the Board No. 249,

dated August 31, 1918, the rate scales thereof are hereby published as required by section 327 of the Railway Act."

Algoma Central and Hudson Bay Railway.....	C.R.C.	No.	478
Algoma Eastern Railway.....	C.R.C.	No.	223
Atlantic, Quebec and Western Railway.....	C.R.C.	No.	26
Boston and Maine Railroad.....	C.R.C.	No.	1908
Canadian Northern Railway.....	C.R.C.	No.	W1132
Canadian Northern Railway.....	C.R.C.	No.	E1102
Canadian Pacific Railway.....	C.R.C.	No.	W2392
Canadian Pacific Railway.....	C.R.C.	No.	E3543
Central Vermont Railway.....	C.R.C.	No.	1295
Dominion Atlantic Railway.....	C.R.C.	No.	576
Edmonton, Dunvegan and British Columbia Railway.....	C.R.C.	No.	86
Essex Terminal Railway.....	C.R.C.	No.	484
Esquimalt and Nanaimo Railway.....	C.R.C.	No.	402
Glengarry and Stormont Railway.....	C.R.C.	No.	93
Grand Trunk Railway.....	C.R.C.	No.	E3957
Grand Trunk Pacific Railway.....	C.R.C.	No.	298
Great Northern Railway—			
Manitoba, Great Northern Railway.....	C.R.C.	No.	1424
Brandon, Saskatchewan and Hudson Bay Railway.....	C.R.C.	No.	1425
Crows Nest Southern Railway.....	C.R.C.	No.	1423
New Westminster Southern Railway.....	C.R.C.	No.	1430
Nelson and Fort Sheppard Railway.....			
Vancouver, Victoria and Eastern Railway and Navigation Company.....			
Red Mountain Railway.....			
Kettle Valley Railway.....			
Victoria and Sydney Railway.....	C.R.C.	No.	V54
Halifax and South Western Railway.....	C.R.C.	No.	F64
Kettle Valley Railway.....	C.R.C.	No.	174
Maine Central Railroad.....	C.R.C.	No.	C1566
Michigan Central Railroad.....	C.R.C.	No.	2812
Napierville Junction Railway.....	C.R.C.	No.	198
New York Central Railroad.....	C.R.C.	No.	1650
New York Central Railroad.....	C.R.C.	No.	1681
Père Marquette Railway.....	C.R.C.	No.	2215
Quebec, Montreal and Southern Railway.....	C.R.C.	No.	661
Quebec Oriental Railway.....	C.R.C.	No.	37
Temiscouata Railway.....	C.R.C.	No.	328
Toronto, Hamilton and Buffalo Railway.....	C.R.C.	No.	1227

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27622.

In the matter of the application of the Canadian Northern Railway Company, for an order extending the time within which it is required by the order of the Board No. 26849, dated December 20, 1917, to erect a station building at Sangudo, Alta.

File No. 28214.

WEDNESDAY, the 4th day of September, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That the time within which the Canadian Northern Railway Company is required to erect a station building at Sangudo, Alta., be, and it is hereby, extended until the first day of October, 1918.

D'ARCY SCOTT,
Assistant Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, October 1, 1918

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Complaint of the Bole Grain Company, of Fort William, that the Canadian Pacific Railway Company refuse to issue bills of lading for grain weighed by the Government Weighing Department, except with the provision "Shipper's Load and Count."

File 26273.

Heard at Port Arthur, Ont., June 19, 1918.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

The practice of sealing cars is in universal use by the railway companies. This practice applies as well to bulk as to general freight. It is a system adopted by the railways, part of their internal management and is a wise and prudent means of preventing pilfering of goods as to which, during transit, they are insurers, or, with the elaborate system used, of seal records, examinations and reports, it is a means of tracing the location of any loss from the cars containing goods. To seal the cars is as wise a precaution as to lock a warehouse containing goods for which the railway could be responsible. The sealing of the car and the locking of the warehouse, do not minimize or impair the carriers liability one iota in case of goods consigned to his care for carriage, neither would the neglect to seal, or to lock, increase it under the ordinary contract of carriage. The carriers' liability for loss does not depend upon the taking or neglecting of such ordinary precautions for his own protection as insurers of the goods left with him for carriage. The seal generally adopted by the railways for this purpose is the Tyden seal, and in the circular on file, containing instructions for its use, it is stated that:—

"3. The use of the Tyden seal is for the protection of freight in cars and to promptly detect lack of protection or pilfering."

It is important to note that the complaint as to the practice of the company in endorsing bills of lading, loaded on private sidings, and not sealed by shippers, with the words "shippers load and count," or the initials "S. L. & C.," is confined to the loading of cars on private sidings, and must be so dealt with in determining the question before us as to the reasonableness, or otherwise, of the practice, and as to its effect upon the relative rights of the parties to the contract of carriage.

Section 340 of the Railway Act does not, in my opinion, apply to the case. A little consideration will convince that the notation of the words "shippers load and count," is not a condition "impairing, restricting or limiting a railway company's liability in respect of the carriage of traffic," as contemplated by that section. The words purport only to deal with a question of fact, and are not inserted for the protection of the railway company from a mistaken, improper or fraudulent representation of the fact by shipper to carrier. *Prima facie*, if the carrier receipts for say 30,000 bushels of wheat, and exacts toll for that amount, the presumption is that he received that amount for carriage and must deliver it, or pay for what he fails to deliver. If the shipment is loaded under such conditions, by the shipper, that the carrier is prevented, without the imposition upon him of unreasonable trouble and expense, from checking the goods into, or checking quantities when in, the car, the words of notation "shippers load and count," imply only the fact, and reserve to the railway company the benefit of the fact, that, as to quantity stated in the bill of lading, he has to rely upon the shipper who loaded and counted. The carrier is, nevertheless, liable for the full amount actually loaded when the carrier took over the goods for carriage. The condition is much the same as that created by the words, in the body of the ordinary bill of lading, approved by this Board, 15th July, 1909, ("contents and conditions of contents unknown"), yet no one would contend that such words were a limitation of liability.

Section 284 of the Railway Act, s.s. 7, read in conjunction with section 340, expressly provides that such a notation shall not relieve the company from action. It reads:—

"Every person aggrieved by any neglect or refusal of the company to comply with the requirements of this section shall, subject to this Act, have an action therefor against the company, from which action the company shall not be relieved by any notice, condition or declaration, if the damage arises from any negligence or omission of the company or of its servants."

It does not seem, therefore, that the addition of the words "shippers load and count," fall within the mischief aimed at in section 340, and, if it does not, there is no impairment of the document by a notation of a special feature affecting the shipment, and which is impliedly provided for by section 11 of the conditions on bulk grain bills of lading, approved by this Board, and of section 11, the ordinary bill of lading also so approved.

The provisions of section 340 are similar in their effect and general meaning to what is known as the "Cummins amendment," to section 20 of the American Commerce Act, and its effect with reference to a notation of the words "shippers load and count," upon a bill of lading issued under very similar circumstances, is considered in *Louisiana State Rice Milling Company v. M. L. & T. R. R. S. S. Co.*, 34 I, C.C.R., at p. 513, as follows:—

"It does not appear that this rule operates to limit the liability of the carrier for the full value of the property shipped but, in its application to a claim for loss because of alleged failure to deliver the whole amount transported, has the effect of placing the burden upon the shipper who loads on his private side-track to prove that the amount specified was loaded and that a less amount was taken out of the car by the consignee; whereas in the case of a receipt not so qualified the burden is upon the carrier to prove that the amount specified in the bill of lading was either not in fact loaded, or was delivered, or otherwise to settle for the full value thereof."

But, whatever be the reasonableness of such an endorsement when considered with reference to the general business of the carrier, there is, at least, some difference, and I think a serious one, affecting the construction to be placed upon such a notation upon a bill of lading of goods shipped from a private siding under the circumstances shown in this case.

Mr. Lanigan, for the railway company, objected, with much force, that the railway in the case of private sidings, could not be asked to give, nor should it be required to give, to a shipper at a private siding, put in for the convenience of an individual industry, the facilities and conveniences of a station, or, in other words, that, as an incident of the advantages of the siding to the shipper he must be prepared to either relieve the railway from the checking up and sealing cars, or in loading them himself be so satisfied with the correctness of his load that he will accept a "shippers load and count" notation.

When sidings were few and close to freight sheds the railways had been in the habit of sending checkers to, or maintaining them at, private sidings, such as those of the complainants and thereby carried to the siding all the facilities afforded at the station. These checkers checked the loads into the cars at the sidings and gave clean bills of lading for them, thereby giving to the siding the same service as if the goods were brought to the freight shed or station of the company. It is pointed out that in Winnipeg, where complainants sidings are located, from which complaints emanated, sidings are now scattered over a distance of 16 square miles, and there are 310 firms located on private sidings where carload freight is loaded or unloaded, and through interswitching the railway (C.P.R.) reaches 143 more firms, making the number of private sidings to be supplied with checkers (if that practice is to continue), 453. A similar condition of things applies to other railways. The practice of so serving shipments at these sidings with the same facilities as though they were individual stations grew, as well it might, beyond the capacity of the railway and it adopted the practice of giving bills of lading on such sidings subject to "shippers load and count,"—the shippers doing the loading themselves. Latterly, and with the concurrence of the Canadian Manufacturers Association, the railways adopted the practice of supplying shippers from private sidings with seals, of a special type reserved exclusively for such traffic, and, if those seals were attached, a clear bill of lading would be issued to the shipper, who thereby virtually assumed responsibility for the correctness of his loading as represented to the carrier. If the shipper refused to attach the seals, given to him for the purpose, the bill of lading was marked "shippers load and count." The practice, while it worked well for a time, occasioned the complaints in question, upon which this Board is asked to rule, and there is involved the consideration of the reasonableness of such an arrangement as has been applied to private sidings.

It is material to observe that, in accordance with the Act, the railway provides and maintains at Winnipeg as elsewhere, public facilities, freight depots, sheds, tracks, team tracks and a necessary force of employees to check shipments as loaded, and to seal cars. I cannot think that the construction of a side track to serve a special industry is entitled to have placed there, at the service of its owner, all the facilities appertaining to and existing at a station maintained under the Railway Act. Side-tracks exist as a convenience to the shippers and this Board has a restricted jurisdiction over them. I do not see, therefore, that this Board can rule that such an arrangement, applicable to the business of a side-track, is unreasonable. Whether right or wrong in that view is immaterial, because, whether we have jurisdiction or not in such a case, and having regard to the contention as it affects the alleged mutilation of the adopted form of bill of lading, I will express my view as to the reasonableness of the system adopted for giving these sidings adequate service consistent with a proper regard for such protection to the carrier as it is entitled to reserve for itself.

The reasonableness of just such a condition, or notation, as is here involved was considered, as regards spur tracks, by the Interstate Commerce Commission in *Louisiana State Rice Milling Co. vs. Morgan's Louisiana & Texas Railroad & Steamship Company et al*, 34 I.C.C., p. 511, and it was there held, after a careful review of a situation very similar to that now before us, that "shippers load and count" provision endorsed on bills of lading covering shipments loaded by the shipper and not checked by the carrier, was not either unreasonable or unlawful, and the complaint was dis-

missed. I extract the following from the very instructive decision of Mr. Commissioner Clements, at p. 513:—

“Coming now to the secondary allegation, that of unreasonableness, raised by complainant. We are asked to require of defendants that upon notice they send a representative to complainant’s mills and check the loading of their shipments, or, if this be found impracticable because of lack of sufficient clerical force, to accept their statement as to quantities, etc., without checking by the carrier, and issue so-called “clean” bills of lading therefor. To comply with complainant’s demand, defendants state, would either require them to accept the shipper’s statement of the quantity loaded without verification, or to send a representative to complainant’s mills upon demand to check the loading of each car, which they say they do not do with respect to any carload freight loaded upon industry tracks connected with their lines, whether the commodity be rice or something else. Defendant’s witness testified that there were 233 industries situated on private tracks adjacent to their lines in the State of Louisiana alone and estimated that in order for them to be prepared to send a man to check all carload freight as loaded at these industries would necessitate the employment of not less than 150 additional men at \$75 per month, or an annual expenditure of \$135,000. Whether or not as much as alleged by defendants, there can be no question that the abolition of this rule or practice would result in substantially increased expense to carriers. It is also manifest that any rule which might here be laid down could not be confined in its application to the shipments made by any particular industry, section, or roads, but must admit of general application.”

The practice in question, as well as the reasonableness of the condition is also dealt with in its relation to perishable commodities, in *Ponchatoula Farmers Association v. I. C. Ry. Co.*, 19 I.C.C., at p. 520, and with substantially the same reasoning.

In the view I take there is no extension of the interpretation beyond the facts and conditions before us. I differentiate, rightly or wrongly, between what duties are imposed, by law, upon the carrier as regards its railway business as controlled and governed by the Railway Act, and his rights to attach reasonable conditions to protect himself as regards a private agreement, the effect of which is to give private railway facilities to a shipper. The reasonableness of the conditions, in such cases, must be judged by the circumstances. In the present case I think complainants were offered a reasonable and workable alternative scheme for the regulation of traffic movements over their spur tracks, a scheme, which, in either alternative, did not offend against the Railway Act in limiting or impairing the liability for the carrier (as I have pointed out), which occasioned a minimum of inconvenience to the shipper, and which afforded to the carrier as reasonable a condition for his protection, *not* from liability as carrier, but from mistake, carelessness and, possibly, fraud, to which he would not be subjected in the case of shipments offered to him, and handled by him with the facilities contemplated by the Act, and which facilities, in my opinion, the shippers were not entitled to insist should be brought to their respective doors.

In the view I hold there was no mutilation of the bill of lading in the addition by the carriers of the notation “shippers load and count” as an alternative protection in case of refusal by the shippers to use the special seals offered, and the use of which would have entitled them to have received a clean bill of lading such as they ask for, I think it was a reasonable provision in the circumstances and I think should be supported.

I would dismiss the complaints.

OTTAWA, August 8, 1918.

The Assistant Chief Commissioner concurred.

Application of Messrs. Davidson and Smith, for an Order directing the Canadian Northern Railway Company to allow the Canadian Pacific Railway Company to switch cars to and from the Canadian Government Elevator at Port Arthur over the C.N.R. spur and property from and to the C.P.R. so as to afford the applicant the same privileges as the Canadian Government Elevator, Port Arthur, Ont.

File 21826.2

Heard at Port Arthur, Ont., June 19, 1918.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

Under Order No. 20593, the Canadian Pacific Railway Company was authorized to use and operate the Canadian Northern Railway Company's spur into the Government elevator at Port Arthur, upon the conditions in said Order set forth, and which provided for the safe operation of the spur at the point of connection, and for the wages of the watchman at that point. The Order referred to was made October 17, 1913, after a hearing at Fort William, June 4, 1913.

At the hearing at Fort William, June 4, 1913, Mr. Oliver, representing the city of Port Arthur, made this contention, which appears at page 4215 of volume 178 of the records:—

“As representing the city of Port Arthur in connection with that matter of the Government elevator, I would just like to raise one point, that there are possibly two or three other elevators that want to go right in alongside of that Government elevator. I want it noted that these people will also want to get some facilities getting down there.”

“The CHIEF COMMISSIONER: They had better not be in a hurry to do anything until we get this settled first.”

At the time that the application upon which Order No. 20593 was made, was heard, the land immediately adjoining the portion sold and conveyed to His Majesty the King, on January 27, 1913, for a Government elevator, was, as had formerly been what is now the Government elevator site, held and owned by Mackenzie, Mann and Company. That firm, subsequently, and on or about July 3, 1913, sold the adjoining portion of water lots upon which the present applicants, Davidson and Smith, the successors in title of the purchaser from Mackenzie, Mann and Company, upon which land the applicants erected and now maintain a public elevator.

The spur of the Canadian Northern Railway referred to in said Order No. 20593 was built into the Government elevator as was also a branch spur therefrom to the Davidson and Smith elevator. The Order mentioned permits of C.P.R. cars being placed over the spur to the Government elevator—but not, so far, to the Davidson and Smith elevator which is served by a branch of said spur—operated by and held solely available to the Canadian Northern Railway Company.

The applicants contend that upon the same grounds as the C.P.R. was accorded use of so much of the spur as leads to the Government elevator, that railway should be accorded the same rights with respect to the other branch of that spur leading to their elevator.

By reference to the application, dated January 18, 1917, on file, it will be seen that applicants contend:—

“At the time we purchased the site on which our elevator is erected, it was with the understanding that we would have the same railway service as the Government elevator, namely the C.P.R. and C.N.R.”

In his judgment upon which Order No. 20593 was based the Chief Commissioner says, page 1:

"The real difficulty can be traced back to the fact that the Grain Commission relied on the representations of the Canadian Northern, as set out in the previous judgment, that access could be had to the elevator for all railways; and then, after having done this, and the elevator is well under construction, the company prepared plans for freight yards, which, if adopted, would effectually prevent the Government elevator having an independent spur, or tracks of other companies running to it."

And in a previous memorandum on the same subject, dated July 29, 1913, the Chief Commissioner, after reciting the telegrams passing between the Railway and Grain Commission, proceeds as follows:—

"Acting on this assurance, the Board of Grain Commissioners purchased the property and contracted for the construction of their elevator which is expected to be finished in time to assist in handling this year's crop."

Under those circumstances the Order was made, the spur built, and the C.P.R. service over it inaugurated and maintained, as far as the Government elevator is concerned, but the branch of the same spur, leading to applicants' elevator, is operated by the C.N.R. alone, and the applicants have not the C.P.R. service which they contend they are entitled to as a consideration of the purchase of that portion of the water frontage upon practically precisely the same conditions as the Government elevator based its claim to such service.

That the applicants did acquire the lands subject to the same, or similar, conditions is made plain by the agreement of January 6, 1917, filed, which, after reciting the contentions of the purchaser of that portion of the water lots, and the railways agreement to coincide such contentions—proceeds:—

"The railway company agrees to and with the purchaser to furnish to the owners and proprietors of the said portion of water lots shown coloured red on the plan hereto attached, railway facilities and connections, and to permit the Canadian Pacific Railway to use and enjoy the same on the same terms and conditions, but subject to the same provisos and restrictions as are now or may be from time to time in force and effect with respect to railway facilities and connections and the use thereof by the Canadian Pacific Railway on the adjoining portion of water lots shown coloured green on the plan attached hereto."

There is no question of construction, and nothing can be found in the contention as to safety of operation of one branch of the spur more than the other, which is jointly operated. The spur is built. Its connection with the tracks of the C.N.R. and C.P.R. is safeguarded by the Order. Inside the spur, one branch leads to the Government elevator, the other to the applicant's elevator, with a lead common to both branches. Both elevator sites appear to have been purchased under similar conditions as to joint service, in the one case fulfilled by the service now maintained under the Order referred to, in the other unfulfilled.

The contentions of the C.P.R. as to the one I regard as no more cogent than to the other branch of this spur, and except that in the one case their operation serves a Government elevator, there is no difference between the relative rights of the parties to an equality of treatment as regards this service. The importance of furnishing the greatest possible transportation facilities for the movement of grain, are not to be minimized.

Whether the facilities asked are the best available in the circumstances is not of urgent importance here. If the agreement is carried out as to the one, and a spur built in, in accordance therewith, I see no reason why, since the other branch of the spur is available for use by both companies, it should not be so applied. All conditions as to

convenience of joint operation are present in the one spur not jointly operated as in the one which is jointly operated, and if the facilities afforded the private owner are the same as those given to the Government elevator, it is because the original conditions and understandings were the same.

I think then that an Order might go, authorizing the Canadian Pacific Railway Company to use and operate the branch spur of the Canadian Northern Railway Company, into the elevator of the applicants, subject to the same conditions as are contained in the Order No. 20593, in so far as they may be applicable to the joint operation of that part of the spur.

OTTAWA, September 10, 1918.

The Assistant Chief Commissioner concurred.

ORDER No. 27695.

In the matter of the application of Davidson and Smith, of Fort William, Ont., herein-after called the "Applicants," for an Order directing the Canadian Northern Railway Company to allow the Canadian Pacific Railway Company to switch cars to and from the Canadian Government elevator at Port Arthur over the Canadian Northern Railway Company's spur and property from and to the Canadian Pacific Railway, so as to afford the applicants the same privileges as the Canadian Government elevator at Port Arthur, Ont.

File No. 21826.2.

MONDAY, the 16th day of September, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Port Arthur, June 19, 1918, the applicants and the Canadian Pacific and Canadian Northern Railway Companies being represented at the hearing, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, authorized to use and operate the Canadian Northern Railway Company's spur into the elevator of the applicants, subject to and upon the following conditions, in so far as the same are applicable to the joint operation of such spur, namely:—

1. That switchmen be appointed by the Canadian Northern Railway Company to operate the switch at the point of connection both day and night; the said spur to be maintained by the Canadian Northern Railway Company.
2. That the wages of the said switchmen and the cost of the maintenance of the said spur be apportioned and paid upon a wheelage basis.

D'ARCY SCOTT,
Assistant Chief Commissioner.

Protection of Main street crossing over the tracks of the Canadian Pacific Railway Company, at Morse, Sask.

File 9437.463.

Heard at Regina, Sask., June 13, 1918.

JUDGMENT.

THE ASSISTANT CHIEF COMMISSIONER:

Main street is the only highway which is constructed across the tracks of the Canadian Pacific Railway Company at Morse. At the point of crossing there are four tracks. The view of those on the highway approaching the tracks from the south is obstructed by buildings to both the east and the west, and the view approaching the tracks from the north is obstructed by the station building on the east, but is clear to the west. At least one accident has happened at the crossing. The traffic on both the railway and the highway is heavy. For forty-eight hours, ending December 22 last, the following was the traffic over the crossing:—

Trains.. . . .	51
Vehicles.. . . .	619
Pedestrians.. . . .	1,961
Equestrians.. . . .	6
Cyclists.. . . .	16

When the history of the crossing is considered, it can hardly be said, as contended by the company, that the highway at that point is junior to the railway. It appears that prior to the 18th July, 1910, there was a crossing over the tracks of the railway company on a road allowance 600 feet east of the present Main street crossing. It became apparent that the road allowance crossing was a dangerous one, and on the application of the railway company the Board approved, by Order No. 11264, of the 18th July, 1910, of the opening of a crossing by the railway company, at its own expense, farther west, on condition that the municipality pass a by-law closing the existing (road allowance) crossing.

The crossing which the Board allowed the railway company to open farther west was at first placed at Brownlee street, and subsequently by Order No. 15493 of the 27th November, 1911, the Brownlee street crossing location was abandoned and a crossing at Main street was approved. Subsequent to that order the railway company constructed the crossing at Main street and the road allowance crossing was closed.

It is quite apparent that there should be some protection at Main street. With two through tracks and two sidings at the point of crossing, the installation of an electric bell would not prove satisfactory. An inspector of the Board who has been on the ground recommends the installation of gates. It is difficult for railway companies to get gates at present, and once a gate is installed the best practice requires that it be maintained both night and day. I think, for the present, the maintenance of a day watchman might be tried to see if such protection proves satisfactory. From the statement of travel over the highway submitted by the railway company, it appears that there is not much travel on the highway at night. I think a day watchman might be appointed by the railway company, to be on duty between the hours of 8 a.m. and 8 p.m.

While the travel on the highway is heavy, it must be borne in mind that the crossing was constructed by the railway company, in lieu of a road allowance crossing, which was doubtless more dangerous, and that the railway company has four tracks over the highway at the point of crossing.

Under these conditions, I think a fair distribution of the cost of the maintenance of a day watchman would be, 25 per cent municipality, 75 per cent railway company. Unfortunately no allowance can be given out of the Railway Grade Crossing Fund, because it is limited by Parliament to contributions towards the construction of works to eliminate or reduce danger at crossings, and not for the maintenance of protection devices.

It may be at some future time that some better method of protecting the crossing in question will have to be ordered by this Board. Both parties are free to bring the matter to the attention of the Board at any future time.

OTTAWA, July 17, 1918.

Mr. COMMISSIONER BOYCE:

The accident which occurred at this Morse crossing, December 5, 1917, was not in any way attributable to the congested nature of the crossing in question, but was due entirely to want of ordinary care in the lad (Alberts) who was slightly injured. See inspector's report, dated January 21, 1918. Eliminating this from consideration the crossing, though fairly busy as to traffic, is not congested, and has been operated safely.

In these times of great stress, shortage of labour, high rates of wages, and difficulty in obtaining labour, I should be reluctant to impose the burden upon the municipality or railway company of jointly maintaining a watchman. Under the circumstances, I would think that an electric highway crossing alarm bell would be substantial protection at least for the present. The cost of it to be apportioned as suggested by the Assistant Chief Commissioner in the case of the maintenance of a watchman which he proposes.

OTTAWA, July 17, 1918.

Mr. COMMISSIONER McLEAN:

Information was submitted as to the train movements and highway movements. The highway movements are itemized under the headings set out in the reasons for judgment of the Assistant Chief Commissioner.

In view of the division of opinion between the commissioners who sat as to the proper method of protection, it appeared necessary to obtain additional information as to the speed of trains over the crossing. This information has come to hand and the matter is now in shape to be dealt with.

While, as pointed out, the reasons for judgment of the Assistant Chief Commissioner set out the headings under which the traffic on the highway is classified, for purposes of convenience these items are bulked in the summary given below.

The following summary sets out the number of train movements over the crossing for a twenty-four-hour period during the hours at which there are also highway movements, the speed per hour of train movements over the crossing, and the number of highway movements. Where more than one speed per hour is shown, e.g., 10-20, this means that one train has a speed of 20 miles per hour; where, as in the case of the period 4-5 p.m., three trains are shown, two of these are at 15 miles per hour:—

Hours.	Train movements.	Miles per hour.	Highway movements.
5- 6	2	25	3
7- 8	3	25	65
9-10	1	15	73
10-11	2	10-20	86
11-12	2	20	165
1- 2	1	15	141
2- 3	2	10-25	116
3- 4	1	15	81
4- 5	3	10-15	70
5- 6	1	25	57
7- 8	1	15	110
8- 9	1	30	167
9-10	1	30	67
10-11	1	30	77
11-12	2	25-30	19

There are three hours, viz., 1-4 a.m., when there are train movements but no highway movements. There are six hours, viz., 12-1, 4-5, 6-7, 8-9, a.m., 12-1 and 6-7 p.m., when there are 380 highway movements but no train movements.

The periods during which there are both train movements and highway movements include 25 out of 28 movements, or an average of 1.6 per hour. Put another way, 89 per cent of the train movements take place during the period which includes 82 per cent of the highway movements.

It is suggested by the Assistant Chief Commissioner that there be a day watchman between the hours of 8 a.m. and 8 p.m. This would mean that there would be no protection during a period which includes 35 per cent of the train movements and 22 per cent of the highway movements.

The commissioners who sat are agreed as to the necessity of protection; there is a division of opinion as to the proper type of protection. On the analysis above set out, a day watchman for a limited period would not adequately take care of the situation. Protection of the main line movements by an electrical bell installation will give continuous protection and should be made.

The commissioners who sat are agreed as to the highway at the point in question having attributes of seniority. Under these conditions, the only question is as to the division of cost. It has been the practice of the Board where a highway is senior to exempt it from any contribution to the cost of installation or maintenance of an electric bell. The cost, therefore, should be divided 20 per cent out of the Grade Crossing Fund; the balance on the railway.

In accordance with Canadian Pacific Railway practice, the installation can be made so that the bell will stop ringing as soon as the engine passes over the crossing.

In addition to the main line tracks, there are two sidings. Switching movements over the crossing on the sidings should be protected by flag by a member of the train crew. Further, where a train is cut on the siding there should be the same protection.

SEPTEMBER 16, 1918.

THE ASSISTANT CHIEF COMMISSIONER:

As a bell is to be ordered, I agree with Mr. McLean's distribution of the cost of the bell.

ORDER No. 27643.

In the matter of the Order of the Board No. 26805, dated December 3, 1917, requiring "inter alia" that the crossings of the Walker road by the Grand Trunk and Pere Marquette Railways in the town of Walkerville, Ont., be protected by gates and apportioning the cost of installation and maintenance;

And in the matter of the accident at the said crossing on April 25, 1918.

File No. 26765.32..

WEDNESDAY, the 4th day of September, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the reports of the Assistant Chief Engineer and of an Inspector of the Board, and the submissions filed on behalf of the railway companies,—

It is ordered: That the said Order No. 26805, dated December 3, 1917, be amended to provide for the installation of one pair of gates at the crossing of the Walker road by the Grand Trunk and the Pere Marquette Railways, in the town of Walkerville, Ont., the cost of installation, including the installation of the tower, to be borne as follows: 20 per cent to be paid out of the Railway Grade Crossing Fund, 24 per cent to be paid by the Grand Trunk Railway Company, 28 per cent by the Pere Marquette Railway Company, and 28 per cent by the town of Walkerville; the cost of maintaining the gates and tower, other than the wages of the watchmen, to be borne and paid 35 per cent by the town of Walkerville, 30 per cent by the Grand Trunk Railway Company, and 35 per cent by the Pere Marquette Railway Company; the cost of the wages of the watchmen to be apportioned as follows: 30 per cent by the town of Walkerville, 25 per cent by the Pere Marquette Railway Company, and 45 per cent by the Grand Trunk Railway Company.

2. That pending the installation of the said gates, the crossing be protected during the day by two watchmen, one for the Grand Trunk Railway and one for the Pere Marquette Railway, and during the night by one watchman, the cost of maintaining the watchmen for said temporary protection to be divided equally between the railway companies.

D'ARCY SCOTT,

Assistant Chief Commissioner.

ORDER No. 27646.

In the matter of the complaint of Howard F. Harding, J.P., of St. Hubert, Que., against the car service furnished by the Montreal and Southern Counties Railway Company, hereinafter called the "railway company," along its Granby-Chamblay branch, and the alleged excessive fares charged on the said line.

Files Nos. 25357 and 25357.1.

MONDAY, the 9th day of September, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the railway company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered as follows:—

1. That the timetable of the railway company effective August 11, 1918, be, and it is hereby, approved.

2. The railway company to stop all trains during the winter months, and all trains, except limited trains Nos. 135, 139, 443, 136, and 430, during the summer months, at St. Hubert road; all local trains to stop at Springfield Park.

3. That the Orders of the Board Nos. 26286, 26325, and 26540, dated respectively July 4, 1917, July 18, 1917, and September 20, 1917, be, and they are hereby, rescinded.

D'ARCY SCOTT,

Assistant Chief Commissioner.

ORDER No. 27664.

In the matter of the Order of the Board No. 24911, dated April 17, 1916, authorizing the parish of St. Placide and the parish of St. Benoît, in the county of Two Mountains, and province of Quebec, to construct a shelter and platform on the Canadian Northern Ontario Railway at Cote Double, Que., detail plans to be submitted by the applicants or the railway company for the approval of an Engineer of the Board.

File No. 25625.

THURSDAY, the 12th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading the further submissions filed, the railway company consenting,—

It is ordered: That the station the Canadian Northern Ontario Railway Company is required to provide at Cote Double, in the province of Quebec, under said Order No. 24911, dated April 17, 1916, be constructed in accordance with the Canadian Pacific Railway Company's No. 2 Shelter plan 11-15-2A; the said station to be completed by November 1, 1918.

H. L. DRAYTON,

Chief Commissioner.

ORDER No. 27688.

In the matter of the application of residents of Oakville, Ont., for an order directing the Canadian Pacific Railway Company, hereinafter called the "railway company," to stop its train No. 821, leaving Toronto for Buffalo at 7 p.m., at Oakville.

File No. 27563.2.

MONDAY, the 16th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon its appearing that the order of the Board No. 26841, dated December 14, 1917, requiring the railway company to stop its train No. 821 at Oakville was not given effect as the result of an arrangement with the residents of the town; and upon reading the submissions filed in support of the application and on behalf of the railway company; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the railway company carry out the terms of the said Order No. 26841, dated December 14, 1917, by stopping its train No. 821 at Oakville, Ont., when there are passengers for that point from Toronto.

H. L. DRAYTON,

Chief Commissioner.

ORDER No. 27691.

In the matter of the application of members of the Commercial Travellers' Association and citizens for an Order requiring better train connection at Inglewood Junction between the Grand Trunk and the Canadian Pacific Railway Companies' trains.

File No. 24131.

MONDAY, the 16th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the railway companies, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Grand Trunk and Canadian Pacific Railway Companies be, and they are hereby, directed to arrange that the Grand Trunk Railway Company's morning train southbound and the Canadian Pacific Railway Company's morning train northbound connect at Inglewood Junction.

2. That when either of said trains is late and there is, or are, on such train a passenger or passengers desiring to connect with the other train at Inglewood Junction, the last named to be held at least ten minutes to enable such connection to be made.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27693.

In the matter of the application of the Edmonton Board of Trade for an Order directing the Canadian Northern Railway Company to appoint a station agent at Legal, Alta.

And in the matter of the Order of the Board No. 26362, dated July 24, 1917, requiring the Canadian Northern Railway Company to provide and construct at Legal a fourth-class station, such station to be, until further Order of the Board, in charge of a caretaker.

File No. 20831.

MONDAY, the 16th day of September, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, June 11, 1918, the applicant and the Canadian Northern Railway Company being represented at the hearing, and what was alleged; and upon the undertaking of the railway company strictly to carry out the terms of the said Order of the Board No. 26362, dated July 24, 1917,—

It is ordered: That the application be, and it is hereby dismissed.

D'ARCY SCOTT,
Assistant Chief Commissioner.

ORDER No. 27694.

In the matter of the Order of the Board No. 26246, dated June 25, 1917, requiring the Canadian Pacific Railway Company to appoint a station agent at Senate, Sask., from September 1 to December 1, in each and every year.

File No. 4205.126.

MONDAY, the 16th day of September, A.D. 1918.

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed by the Canadian Pacific Railway Company,—

It is ordered: That the Canadian Pacific Railway Company be, and it is hereby, granted leave, pending further Order to remove the regular agent at Senate, Sask., subject to and upon the condition that a caretaker be appointed to see that the station is kept clean and heated for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

D'ARCY SCOTT,

Assistant Chief Commissioner.

ORDER No. 27696.

In the matter of the application of residents and farmers in the vicinity of Durban, Man., for an Order directing the Canadian Northern Railway Company to provide suitable station and freight shed facilities at that point.

File No. 13411.

MONDAY, the 16th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

D'ARCY SCOTT, *Assistant Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company; and upon the report of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to erect a third-class station building at Durban, Man.; the work to be completed by December 1, 1918.

H. L. DRAYTON,

Chief Commissioner.

ORDER No. 27702.

In the matter of the application of the Dominion Atlantic Railway Company for approval of Standard Passenger Tariff C.R.C. No. 1 of the North Mountain Railway Company.

File No. 28918.

MONDAY, the 16th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

The said standard passenger tariff having been filed on the basis of 3.45 cents per mile,—

It is ordered: That the said standard passenger tariff of the North Mountain Railway Company C.R.C No. 1 be, and the same is hereby, approved. The said tariff together with reference to this Order to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 250.

In the matter of the General Order of the Board No. 230, dated May 17, 1918, in the matter of the interswitching of freight traffic, and the General Order of the Board No. 243, dated July 25, 1918, postponing the effective date of the said General Order No. 230 until the first day of October, 1918.

Case No. 2846.

MONDAY, the 16th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is filed by the Canadian Manufacturers' Association, and upon its request for further postponement of the effective date of General Order No. 230,—

It is ordered: That the effective date of the said General Order No. 230, dated May 17, 1918, be, and it is hereby, further postponed until the first day of November, 1918.

H. L. DRAYTON,
Chief Commissioner.

The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaints re Alberta Train Service.

File Nos. 27563.56.6, 27563.56.7, 27563.56.9, 27563.56.10, 618.39 and 618.62.

JUDGMENT.

The CHIEF COMMISSIONER:

The files attached involve complaints as to train service in the section between Lethbridge and Coutts, Alta., on the MacLeod subdivision between Aldersyde and MacLeod; the Crow's Nest subdivision between MacLeod and Lethbridge, the Stirling subdivision, and the Suffield, Irricana, and Coronation subdivisions.

The complaints as to the section between Lethbridge and Coutts have been received from the Lethbridge Board of Trade and the Cardston Board of Trade. Complaints have been received from various individuals and organizations in connection with the other sections referred to.

The Canadian Pacific has taken steps to reduce passenger train service, the ground alleged for such reduction being the falling off in freight traffic on account of the short harvest conditions and the corresponding reduction in passenger service. The railway also states, in substance, that at the present time it is in the public interest to economize by the elimination of unnecessary passenger mileage wherever such economy is possible.

The situation as to the train service and as to traffic conditions has been gone into both by Mr. Shinnick, of the Board's Operating Department, and Mr. Spencer, the Board's Chief Operating Officer, and they both find what is already established in other points, viz., that there is a low crop in all southern Alberta, and that in the other subdivisions already referred to the company is faced with a season of admittedly diminished traffic.

The service from Lethbridge to Coutts is important because of the connection at that point with the Great Northern, affording service north and south. The Great Northern reduced its train service between Great Falls, Mont., and Coutts to a tri-weekly service, this taking effect on September 1. The Canadian Pacific had taken up the question of train service reduction on August 18.

Inspector Shinnick's finding, briefly, is this: the crop failure is admitted. On the Cardston subdivision and vicinity they will not harvest more than 20 per cent of the last year's crop. On the MacLeod subdivision, with some small improvements in the details of mail and express service out of Calgary, both of which matters have been taken up, the traffic can reasonably be taken care of. On the Coutts and Cardston subdivisions, with the addition of a mixed train on the alternate days in one

direction, this mixed train to handle mail and express matter, the requirements can reasonably be taken care of; this mixed train service can be given by making use of the present way-freight trains starting out of Lethbridge for Coutts and Cardston on Mondays, Wednesdays, and Fridays; returning, leaving Cardston on Tuesdays, Thursdays, and Saturdays; and Coutts on Tuesdays, Thursdays, and Saturdays; it being necessary for the trains to go into Lethbridge on the same days of the week from both of these subdivisions in order properly to take care of live-stock shipments. On the Stirling, Suffield, and Irricana subdivisions the people have to depend entirely upon the mixed-train service for railway transportation facilities, and cannot reasonably be asked to do with less than a two-trip-per-week service. The people on the Irricana subdivision made no complaint, but to be of any real and practical value to the community, ought to afford at least two trips per week.

The necessary rearrangements have been gone into by Mr. Shinnick and by Mr. Spencer, and the rearrangements which they find justified and which should be accepted may be set out summarily as follows: The changes are due entirely to the existing unsatisfactory traffic situations in the sections in question. In some instances it is questionable whether they will do more than barely recoup the cost of the service performed, but they constitute the maximum of what the Board is justified in directing under existing conditions. With improved conditions there should, of course, be an improvement in service.

Lethbridge-Coutts Subdivision.—The hitherto existing service has been a daily passenger, with the exception of Sunday. This has been reduced by the company to a tri-weekly passenger service. The Board's Operating Department approves of this, but in addition recommends that there should be a mixed train service on alternate days.

Lethbridge-Cardston Subdivision.—The same remarks apply.

Crow's Nest Subdivision.—Between MacLeod and Lethbridge the company has taken off the through Calgary train and added a local train leaving MacLeod at 7.50 a.m. instead of 1.25 p.m. This arrangement enables people to leave MacLeod in the morning, transact their business in Lethbridge, and get back to MacLeod around 6 o'clock at night. There is also a service available returning from Lethbridge to MacLeod by the Spokane train.

As to the service between Calgary and MacLeod, there is the direct local service leaving Calgary at 7.25 p.m., arriving at 11.30; and there is also the Spokane service, via Kipp, leaving Calgary at 10.20 p.m., and arriving at MacLeod 5.20 a.m. In addition there is the service leaving Calgary 8.50 a.m., this movement being via Kipp. The train arrives at Kipp at 1.57 p.m., and there is a stop-over to 5.15 p.m.. From Kipp to MacLeod is one hour's run.

The effect on this subdivision is that instead of a two-trains-per-day service each way as formerly, there is a one-train-a-day service. Some difficulties arose as to the prompt handling of mail and express, but this has been gone into by the Board's Operating Department and the adjustments effected of revised service may be approved. As already pointed out, there are through services still existing between Calgary and MacLeod.

Stirling Subdivision.—Here the service was reduced by the company from a semi-weekly to one train per week mixed. On investigation it appears that the service should be restored, so that there will be two mixed trains per week. The company was willing to reinstate this until October. It appears to the Board that the service should be continued to the end of the year. Traffic justification for it being continued on the two-train-a-week basis beyond that date is not apparent.

On the Suffield and Irricana subdivision the company desired to make the same reduction as on the Stirling subdivision. An order similar to that dealing with the Stirling subdivision should be made.

On the Coronation subdivision, the company operated its Lacombe subdivision trains Nos. 529 and 530 (passenger) through to Kerrobert, a point some 110 miles east of Coronation. This train service has been withdrawn and in place there was given a daily, except Sunday, mixed-train service, in connection with which it was proposed only to give a tri-weekly express service. On the matter being taken up with the company an undertaking was given to provide an express service daily, except Sunday, on the mixed trains now in operation. The Board's Operating Department is of the opinion that the mixed train service as proposed and now in operation is, under existing traffic conditions, all the Board can reasonably ask the company to give under present conditions.

By the Board's Order No. 9034 of December 23, 1908, provision was made for a specific service on the Alberta Railway and Irrigation Company's line, and on the facts as pointed out by Mr. Spencer the railway company departed from the provisions of this order without any sanction of the Board.

By Order No. 24912 of April 18, 1916, provision was also made for a specific passenger service on the Coronation subdivision. A similar situation here arises.

It is quite true that these orders were made some time ago. It is also true that orders relating to train service, whether for freight or for passengers, are orders which are made in the light of traffic conditions as they then existed. In the very nature of things, as traffic increases, service must be increased; and as a further corollary, when there is no business to be done, unnecessary service ought to be curtailed.

It is also undeniably the fact, however, that before changes are made by a company, that company ought to acquaint itself not only with the particulars of the traffic, but the particulars in which the service was put in in the first instance. This the company omitted to do, through inadvertence it is stated, and that the officer making the change in the service knew nothing about the orders.

Orders for train service will have to carry with them penalties for their non-observance if any further non-observance occurs. It is hoped that the action of the company in future will be such that no such action will become necessary.

As a result the company, speaking generally, is compelled to give a service on the whole greater than the reduction it desired to make. The Board has taken this action after very carefully weighing the exigencies of the situation. Undoubtedly it is not in the best interests of the country that unnecessary train service should be maintained, and in many instances the company's position as to whether a service is or is not necessary depends upon the amount it is used, as indicated by the resultant profits, may well be the case.

It is true that raw materials necessary for locomotives and railway equipment are both scarce and expensive; that man shortage in some parts of the country, and having special regard to the mechanical upkeeps of engines, and the shortage in coal at many points having regard to the exigencies of next winter, is serious.

The Board also recognizes the fact that very large reductions in passenger service, in view of national necessity, have been made in American territory; that the report of the Honourable Mr. McAdoo shows a reduction in two districts there specifically mentioned of some 47,420,000 passenger-train miles; but these reductions have been made in territories which are more comparable to Eastern Canada. In Eastern Canada drastic train reductions have been made. The conditions, however, are somewhat different in Western Canada. Simply because there has been a crop failure this year in any particular district seems to me to be no reason why such a necessary service should not be maintained as will enable the district to carry on and to prepare for a proper crop the next year.

The ordinary business activities of the district should be so served as to enable them to be carried on, and I am of the opinion that the service now ordered is as small as reasonably may be. It is also true, of course, that having regard to the increased costs of train service and having regard to the provision being made by the

Dominion Government for the taxation of the Canadian Pacific, that the taxpayer generally is perhaps as much interested in any possible Canadian Pacific surplus over dividends as the shareholders; this, however, cannot in the slightest degree make any difference in the situation.

Such minimum service as will enable the necessary and ordinary business of the country to be carried on should in every instance be afforded.
September 30, 1918.

Mr. Commissioner Goodeve concurred.

ORDER No. 27724.

In the matter of the complaints of the Veteran Local United Farmers of Alberta, No. 363, the Rolling Green Local United Farmers of Alberta, No. 244, the Monitor Board of Trade, the Consort Board of Trade, the Veteran Board of Trade, and Myrtle Austin, President of the U.F.W.A. of Veteran, against the reduction in train service on the Canadian Pacific Railway.

File No. 618.39.

MONDAY, the 30th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

The above complaints having been investigated by the Board's Operating Department, and upon its appearing that the mixed-train service proposed by the Canadian Pacific Railway Company and now operating daily except Sunday between Coronation and Kerrobert, carrying both mail and express, will reasonably take care of the traffic until there is some assurance of a better crop next year, and the recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Pacific Railway Company's timetable dated August 18, 1918, be, and it is hereby, approved.

And it is further ordered: That the Order of the Board No. 24912, dated April 18, 1916, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27725.

In the matter of the reduction in train service on the Canadian Pacific Railway Company's Irricana Subdivision from a semi-weekly to a one day per week mixed train service.

File No. 27563.56.10.

MONDAY, the 30th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

The matter having been investigated by the Board's Operating Department and upon its appearing that this service should be restored, on the recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the semi-weekly mixed train service on the Canadian Pacific Railway Company's Irricana Subdivision be restored and maintained until and including the 31st day of December, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27726.

In the matter of the complaints of J. E. Carter, secretary-treasurer of the town of Memiscan, Alta., James Sergeant, secretary-treasurer of the town of Etzikom, Alta., and the Foremost Board of Trade, Alberta, against the reduction in train service on the Canadian Pacific Railway, Sterling-Manyberries Subdivision.

File No. 27563.56.9.

MONDAY, the 30th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

The matter having been investigated by the Board's Operating Department, and upon the recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the semi-weekly mixed train service on the Sterling-Manyberries Subdivision of the Canadian Pacific Railway be restored and maintained until and including the 31st day of December, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27727.

In the matter of the complaints of the Travers, Alberta, Board of Trade, Citizens of Retlaw, Alta., and the Canada Land and Irrigation Company of Medicine Hat, Alta., against the reduction in train service on the Suffield-Lomond Branch of the Canadian Pacific Railway.

File No. 27563.56.7.

MONDAY, the 30th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

The matter having been investigated by the Board's Operating Department and upon the recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the semi-weekly mixed train service between Suffield and Lomond on the Canadian Pacific Railway be restored and maintained until and including the 31st day of December, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27728.

In the matter of the complaints of the Lethbridge Board of Trade, the Cardston Board of Trade, the Mayor of Magrath, Alta., the Mayor and Board of Trade of Raymond, Alta., the business men of Milk River, Alta., the secretary-treasurer of the United Farmers of Alberta, Calgary, W. A. Buchanan, M.P., of Lethbridge, and John L. Fawcett, LL.B., of MacLeod, Alta., against the reduction in passenger train service on the Calgary-MacLeod, Lethbridge-Cardston, Lethbridge-Coutts Subdivisions of the Canadian Pacific Railway.

File No. 27563.56.6.

MONDAY, the 30th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

The matter having been investigated by the Board's Operating Department and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That a tri-weekly mixed train service carrying mail and express be established between Lethbridge and Cardston and between Lethbridge and Coutts, in the province of Alberta; the said mixed trains to (a) leave Lethbridge for Cardston and Coutts on Monday, Wednesday, and Friday, and returning, (b) leave Cardston and Coutts for Lethbridge Tuesday, Thursday, and Saturday at such times as will best meet the requirements of the local conditions; that with the exception of the change herein directed to be made the Canadian Pacific Railway Company's timetable of August 18, 1918, be approved.

And it is further ordered: That paragraph (f) of the order of the Board No. 9034, dated December 23, 1909, relating to the train service between Lethbridge and Cardston be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

Complaints of Martin & Robertson, Limited, and the Imperial Rice Milling Company of Vancouver, against the increased carload rates on rice, from Vancouver to Eastern Canada, which went into effect in August, 1917.

File No. 27027.1.

JUDGMENT.

The CHIEF COMMISSIONER:

The above complaints were heard before the Assistant Chief Commissioner and Commissioner Boyce at the sittings of the Board held in Vancouver, June 6, 1918. Judgment was reserved. The Assistant Chief Commissioner, who has been investigating the rate situation involved, was unable to complete the matter before his term of office expired. He has now completed the work, and the judgment which he would ordinarily have delivered on the application is as follows:—

“Joint C.P.R., C.N.R., G.T.P.R., G.N.R., Tariff C.P.R. No. C.R.C. W-2052, effective July 20, 1915, made the rate on rice, in carloads of 30,000 pounds minimum weight, from Vancouver and Victoria to Toronto and Montreal points 75 cents per 100 pounds. This rate applied on import rice for refining in Montreal, as well as the finished product shipped from the mills of the complainants.

“Previous to the war the Eastern Canada refiners got their rice by all water to Montreal, mostly from India. After the outbreak of war these refineries were not able to secure their raw material in the same way and commenced purchasing their supplies from the same sources as the Western refineries, viz., Siam, Japan, and other points on the Pacific. The result of this movement from the Orient to Atlantic points was the establishment by the lines operating from Vancouver, Victoria, Seattle, Tacoma, and San Francisco, January 21, 1916, of a special import rate on raw or uncleaned rice from those ports to Montreal of 60 cents per 100 pounds, with a minimum of 60,000 pounds (see Countiss Tariff No. 26-C, Sup. No. 3). This 60-cent rate was a competitive all-rail rate established to compete with the Panama and Tehautepec routes. It was withdrawn May 1, 1916.

“By Supplement No. 17, effective February 28, 1916, to the aforesaid C.P.R. tariff W-2052, the following rates on rice from Vancouver to Toronto and Montreal points were established: a 60-cent rate with a minimum of 70,000 pounds, and a 65-cent rate with a minimum of 40,000 pounds; and the old 75-cent rate with a minimum of 30,000 pounds was continued in effect. This supplement carried a clause that it would expire on May 1, 1916. These reduced rates were, by Supplement 25, subsequently continued in effect by the railways until the 31st December, 1916. On January 1, 1917, by Supplement 41 to the same tariff, a 65-cent rate with a minimum of 60,000 pounds was put in force, and Supplement No. 44 defined ‘rice’ as ‘cleaned or milled.’

“Owing to the scarcity of tonnage caused by the transfer of Pacific ocean ships to transatlantic service, the competition by the water routes became less effective, and the railway companies desiring to return to their original rates published Supplement No. 54 to the same tariff No. 2052, which made a 75-cent rate, effective on August 1, 1917. It should be noted that while the original 75-cent rate was on the minimum of 30,000 pounds, the rate established on August 1, 1917, was on a minimum of 60,000 pounds. It is admitted by the complainants that 60,000 pounds of rice can be put into a car.

“The Board has been asked by the complainants to re-establish the 65-cent rate. The price of the commodity has increased considerably in the last few years. At one time the raw material was bought for \$35 for 2,200 pounds. We are told by the complainants that they now must pay from \$60 to \$75 a ton of 2,000 pounds. In addition to this, there is now a duty of $7\frac{1}{2}$ per cent on the raw material. The retail selling price has, of course, greatly increased. It is

quite clear that the lower rate was made effective to meet water competition. That competition having lessened, the railway companies are quite justified in taking out their competitive rates.

"The Board has decided on many occasions that a railway company is not obliged to meet water competition, and that a railway company is free to take out low competitive rates, provided there is no undue discrimination, and that the rates made effective are reasonable in themselves.

"In my opinion the rates in question should not be interfered with, and this application should be dismissed."

On going carefully into the complaint on the rate situation, I entirely agree with the above conclusions and desire to adopt them, and do adopt them, as my judgment herein.

October 3, 1918.

Commissioner Boyce concurred.

ORDER No. 27756.

In the matter of the complaints of Martin and Robertson, Limited, and the Imperial Rice Milling Company, Limited, of Vancouver, B.C., against the increased car-load rates on rice from Vancouver to Eastern Canada which went into force in August, 1917.

File No. 27027-1.

WEDNESDAY, the 9th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaints at the sittings of the Board held in Vancouver, June 6, 1918, the complainants and the Canadian Northern Railway Company being represented at the hearing and what was alleged; and upon reading the report of the Chief Traffic Officer of the Board,—

It is ordered: That the complaints be, and they are hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27709.

In the matter of the application of the township of Moulton, in the county of Haldimand, province of Ontario, hereinafter called the "applicant," for an order directing the Grand Trunk Railway Company to provide better shipping facilities, a siding for loading and unloading freight, and a freight shed at Low Banks station on the railway company's Buffalo and Goderich branch, eight miles east of Dunnville, Ont.

File No. 28698.

MONDAY, the 16th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Grand Trunk Railway Company be, and it is hereby, directed forthwith to put the present station at Low Banks, Ont., in a proper state of repair and to appoint a caretaker to look after less-than-carload freight and express matter and keep the station properly heated and lighted for the accommodation of passengers.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27711.

In the matter of the application of the Quebec Railway, Light and Power Company for approval of its Standard Mileage Freight Tariff C.R.C. No. 113.

File No. 1306-1.

SATURDAY, the 21st day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

The said Standard Mileage Freight Tariff having been filed on the basis permitted in Order in Council P.C. 1863, dated July 27, 1918,—

It is ordered: That the Quebec Railway, Light and Power Company's Standard Mileage Freight Tariff C.R.C. No. 113 be, and the same is hereby, approved. The said tariff together with reference to this order to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27714.

In the matter of the storage of ex-lake grain in the elevators of the Harbour Commissioners of Montreal.

File No. 28930.

FRIDAY, the 27th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Whereas the Harbour Commissioners of Montreal, by by-law No. 104, issued September 20, 1918, to become effective October 1, 1918, have reduced the period within which grain may be stored in their elevators at the port of Montreal, free of storage, from twenty days to ten days, the said Harbour Commissioners not being subject to the jurisdiction of the Board;

And whereas the Grand Trunk Railway Company, relying on the by-law of the said Harbour Commissioners previously in force, announces in its tariff that the grain carried by the company from its lake ports is entitled to twenty days free storage, and has applied to the Board for permission to amend its tariff so as to restrict the said free storage period to ten days on and from the first day of October, 1918,—

It is ordered: That the Grand Trunk Railway Company, or any other railway company that has made similar publication be, and it is hereby, permitted to amend

its tariff, or tariffs, as aforesaid; provided that should the Harbour Commissioners extend their free storage period beyond ten days, the tariff, or tariffs, of the railway company, or companies, shall be simultaneously amended so as to provide for at least the same free storage period.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27715.

In the matter of the complaint of the Pole Grain Company of Fort William, Ont., that the Canadian Pacific Railway Company refuses to issue bills of lading for grain weighed by the Government weighing department except with the provision "shipper's load and count."

File No. 26273.

FRIDAY, the 27th day of September, A.D. 1918.

Sir HENRY L. DRAYTON. K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Port Arthur, June 19, 1918, the Fort William and Port Arthur Grain Exchange, the Canadian Pacific, the Canadian Northern, and the Grand Trunk Railway Companies and the Ogilvie Flour Mills, Limited, being represented at the hearing, no one appearing for the complainant, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27716.

In the matter of the consideration of the question of the protection to be provided at the crossing of Main street by the Canadian Pacific Railway, being the first crossing west of Morse station, in the province of Saskatchewan.

File No. 9437.463.

FRIDAY, the 27th day of September, A.D. 1918.

Sir HENRY L. DRAYTON. K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Regina, June 13, 1918, in the presence of counsel for the railway company, no one appearing for the municipality; and upon reading the further written submissions filed,—

It is ordered: That within sixty days from the date of this order, the Canadian Pacific Railway Company install an improved type of automatic bell at the said crossing, in accordance with "The Standard Specifications for Highway Crossing Signals," approved under General Order No. 96, and thereafter maintain the said

bell at its own expense; a detail plan showing the layout thereof to be submitted for the approval of an engineer of the Board; twenty per cent of the cost of installing the said bell to be paid out of the "Railway Grade Crossing Fund", and the remainder to be paid by the Canadian Pacific Railway Company.

2. That all switching movements over the crossing on the siding be flagged by a member of the train crew; when a train is cut on the siding the same protection to be provided.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27737.

In the matter of the application of the Canadian Northern Western Railway Company, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open for the carriage of traffic that portion of its line of railway from mileage 32.1, Peace River Extension, to mileage 33.8, in the province of Alberta, a distance of 1.7 miles.

File No. 28729.

FRIDAY, the 27th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

W. B. NANTEL, *Deputy Chief Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its line of railway from mileage 32.1, Peace River extension, to mileage 33.8, in the province of Alberta, a distance of 1.7 miles.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27718.

In the matter of the complaint of the Dominion Travellers' Association and the Northwestern Canada Travellers' Association of Montreal and the Commercial Travellers' Association of Canada, Toronto, Ont., against the proposed cancellation by the Quebec, Montreal and Southern Railway Company and the Napierville Junction Railway Company of reduced fares and special baggage allowance for commercial travellers,—

File No. 6679.2.

SATURDAY, the 28th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been submitted on behalf of the complainants:—

It is ordered: That the following schedules be, and they are hereby suspended pending hearing on a date to be fixed by the Board:—

Quebec, Montreal, and Southern Railway.

Supplement 6 to C.R.C. No. 160.

Supplement 1 to C.R.C. No. 236.

Supplement 2 to C.R.C. No. 263.

Napierville Junction Railway.

Supplement 3 to C.R.C. No. 31.

Supplement 2 to C.R.C. No. 69

Supplement 1 to C.R.C. No. 94.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27721.

In the matter of the application of the Dominion Atlantic Railway Company, hereinafter called the "applicant company", under section 261 of the Railway Act, for authority to open for the carriage of traffic the Mountain Branch of its line of railways:

File No. 141263.

SATURDAY, the 28th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its North Mountain Branch from Centreville to Weston, a distance of 15.03 miles.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27751.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Midnapore, Alta., on its line between Calgary and Macleod.

File No. 4205.165.

SATURDAY, the 28th day of September, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the residents of Midnapore and vicinity; and upon the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the applicant company be, and it is hereby, granted leave pending further order to remove the regular agent at Midnapore, Alta., on its line between Calgary and Macleod, subject to and upon the condition that the station waiting-room is kept clean and when necessary heated and lighted for the accommodation of passengers on arrival and departure of trains, and that less than carload freight and express matter is properly housed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27741.

In the matter of the complaints of H. H. Jones and Company of Sabrevois, Que., and the Municipal Council of St. George de Clarenceville, Que., against the train service furnished by the Quebec, Montreal and Southern Railway Company between Iberville and Noyan Junctions.

File No. 18727-2.

TUESDAY, the 1st day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the complaints and on behalf of the railway company and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Quebec, Montreal and Southern Railway Company be, and it is hereby, required: (1) to arrange its time table so as to extend its mixed train now due to arrive at Noyan Junction at 7.30 p.m., daily except Sunday, through to Lacolle Junction, showing it to arrive at 8 p.m.; and its mixed train now due to leave Noyan Junction at 5.50 a.m. to leave Lacolle Junction at 6.35 a.m., and Noyan Junction at 7 a.m., arriving at Iberville at 8.20 a.m.; and (2) to arrange with the Grand Trunk Railway Company (a) to operate the said trains between Noyan Junction and Lacolle Junction at the times specified, (b) to honour tickets on such trains to and from Lacolle Junction, and (c) to sell tickets at Lacolle Junction to points on the Quebec, Montreal and Southern Railway.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27743.

In the matter of the application of the Mount Royal Tunnel and Terminal Company, Limited, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open its line for the carriage of traffic from the junction with the Canadian Northern Ontario Railway Company's lines at or near St. Laurent to the terminal located at Lagauchetière street, in the city of Montreal, and to operate through the tunnel on the said line.

File No. 2342.129.

FRIDAY, the 4th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Chief Engineer and the Electrical Engineer of the Board, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open its line for the carriage of traffic from the junction with the Canadian Northern Ontario Railway Company's lines at or near St. Laurent to the terminal located at Lagauchetière street, in the city of Montreal, province of Quebec, and to operate through the tunnel on the said line.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 251.

In the matter of the General Order of the Board No. 244, dated July 26, 1918, requiring and directing inter alia every railway company subject to the legislative authority of the Parliament of Canada to give notice to the Board of any accident upon the railway attended with personal injury to any person using the railway or to any employee of the company.

File No. 45.

FRIDAY, the 4th day of October, A.D. 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*HON. W. B. NANTEL, *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said General Order No. 244, dated July 26, 1918, be, and it is hereby, amended by inserting the words “of personal injuries” after the word “reports” in the 14th line of the first paragraph of the order; and the words “failure of locomotive boiler or any of its appurtenances” after the word “collisions” in the first line of paragraph (2) of the order.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27747.

In the matter of the application of the Hamilton Radial Electric Railway Company, hereinafter called the “applicant company,” under sections 222, 223, and 237 of the Railway Act, for authority to construct, maintain and operate a siding or switch from its main line on Wilson street, in the city of Hamilton, crossing Wilson street, to and into the premises of the Tallman Brass and Metal Company, Limited, as shown on the plan, profile and book of reference, combined, deposited in the Registry Office for the Registry Division of Wentworth on August 8, 1918, as No. 213, on file with the Board under file No. 28661.

MONDAY, the 7th day of October, A.D., 1918.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, August 27, 1918, in the presence of counsel for the applicant company and certain property owners affected, and what was alleged; upon reading the further submissions filed, and the report and recommendation of the Chief Engineer of the Board, and the consent of the Tallman Brass and Metal Company, Limited, endorsed on the plan; publication of notice of the application being hereby dispensed with,—

It is ordered: That the applicant company be, and it is hereby, authorized to construct, maintain, and operate a branch line of railway or spur across Wilson street, in the city of Hamilton, to and into the premises of the Tallman Brass and Metal Company, Limited, as shown on the said plan, profile and book of reference combined

on file with the Board under file No. 28661, subject to and upon the terms and conditions following, namely:—

1. Compensation, if any, as the Board may hereafter order, shall be paid to the property owners affected.

2. The applicant company to pay for the necessary changing of poles, hydrants, stop-cock boxes, reconstruction of pavements, sidewalks, and all other city works interfered with or made necessary by the construction of the said tracks, the whole of the work to be done to the satisfaction of the city engineer.

3. The applicant company shall, at its own cost and expense, provide all protection, safety and convenience for the public (including any changes at any time required therefor) in respect of such crossing of the highway by the railway. The applicant company at all times shall keep said crossing in a safe and proper state of repair to the satisfaction of the city engineer.

4. The applicant company shall also flag every movement of freight across the highway at this point.

5. The said crossing to be constructed in accordance with "The Standard Regulations of the Board affecting highway crossings as amended May 4, 1910."

6. The siding herein authorized to be completed within six months from the date of this order.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27749.

In the matter of the application of John A. O'Donohue, of Jockvale, Ont., for an order directing the Canadian Northern Railway Company to give Fallowfield station a train service of four trains a day and that the night train leaving Ottawa at 10.30 p.m. (Toronto-Ottawa line) be made to stop at Fallowfield.

File No. 28225.

MONDAY, the 7th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Northern Railway Company's proposed timetable effective October 20, 1918, providing for a local train eastbound due at Fallowfield at 10.05 a.m. and westbound at 5.49 p.m. be, and it is hereby, approved, the train due to leave Ottawa at 12.45 p.m. daily except Sunday to stop at Fallowfield on flag signal for passengers destined to points west of Forfar, and the train eastbound due to leave Toronto at 10 a.m. to stop at Fallowfield when necessary to allow passengers from points west of Forfar to detrain.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27752.

In the matter of the application of the Canadian Northern Railway Company, herein-after called the "applicant company," for an order extending the time within which it is required by the order of the Board No. 27173, dated May 2, 1918, to enlarge the waiting-room at Lamont, Alta., and provide a heated room for perishable and express shipments.

File No. 6516.

TUESDAY, the 8th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed by the applicant company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the time within which the said work is required to be done be, and it is hereby, extended until the 20th day of November, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27760.

In the matter of the Order of the Board No. 23341, dated February 23, 1918, authorizing the Canadian Pacific Railway Company to remove the regular agent at Jeanette Station, in the province of Ontario, subject to and upon the condition that a caretaker, who shall be authorized to sell tickets, be appointed to see that the station is kept clean and heated for the accommodation of passengers on the arrival and departure of trains and to care for less than carload freight and express matter.

File No. 4205.15.

WEDNESDAY, the 9th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed on behalf of the Canadian Pacific Railway Company and the municipality of the township of Tilbury East; and upon the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the said order of the Board No. 23341, dated February 23, 1915, be, and it is hereby, amended by striking out the words "who shall be authorized to sell tickets" in the fifth line of the operative part of the order.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27761.

In the matter of the Canadian Northern Railway Company, hereinafter called the "applicant company," in pursuance of the General Order of the Board No. 119, dated January 31, 1914, for an order permitting it to remove the station agent at Brooking, in the province of Saskatchewan.

File No. 20111.

WEDNESDAY, the 9th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the business men of Brooking, Sask.; and upon the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That, from the 15th day of December, 1918, the applicant company be, and it is hereby, granted leave, pending further order, to remove the regular station agent at Brooking, in the province of Saskatchewan, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, and, when necessary, heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 171.

File No. 1708.3—Disinfecting passenger cars that have been occupied by patients suffering from contagious or infectious diseases.

September 25, 1918.

Railway companies subject to the jurisdiction of the Board are required to issue instructions to conductors of trains carrying passengers, to report immediately, to the proper officer, any case, or cases, that they know of or have reason to suspect, of a passenger, or passengers, suffering from contagious or infectious diseases, having travelled in any of the cars in their trains; and, furthermore, instruct the official designated to have such car, or cars, removed from service and thoroughly disinfected in accordance with clause 5 of General Order No. 35, before permitting the same to go into service again.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

CIRCULAR No. 172.

File 4135.25. Uniform Maintenance of Way Flagging Rules.

September 25, 1918.

The Maintenance of Way Flagging Rules as set forth in General Order No. 188, dated April 23, 1917, have been amended by General Order No. 216 of January 24, 1918, and General Order No. 248 of August 19, 1918.

In order that there may be no misunderstanding in regard to these rules, I am sending you herewith a copy of the rules as they now stand with the amendments called for in General Orders 216 and 248.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

UNIFORM MAINTENANCE OF WAY FLAGGING RULES.

Rules of General Order No. 188 as amended by General Order No. 248.

OTTAWA, September 25, 1918.

1. Before undertaking any work which will render the main track impassable, or if rendered impassable from any cause or defect, trackmen, bridgemen, or other employees of the company shall protect the same as follows:—

2. (a) On double track; (b) on three or more tracks; (c) in mountain territory; and (d) on all lines with frequent or fast train service.

Send out a flagman in each direction with stop signals, at least:—

Fifteen hundred feet in daytime, if there is no down grade towards the obstruction within one mile, and there is a clear view of 6,000 feet from an approaching train.

Thirty-six hundred feet at other times and places, if there is no down grade towards the obstruction within one mile.

Fifty-four hundred feet if there is a down grade towards the obstruction within one mile.

The flagmen must, after going the required distance from the obstruction to insure full protection, take up a position where there will be an unobstructed view of him from an approaching train of, if possible, 1,500 feet, first placing two torpedoes on the rail (not more than 200 or less than 100 feet apart), on the same side as the engineer of an approaching train, 300 feet beyond such position. The flagman must display a red flag by day and a red light by night, and remain in such position until recalled or relieved.

3. On other lines,—

(a) By day place a red flag and, in addition, by night a red light, on the same side of the track as the engineer of an approaching train, at a point 600 feet from the defective or working point, with two torpedoes placed on the rail opposite each other so as to cause but one explosion, 150 feet in advance of the red signal, and provide further protection as follows:—

(b) By day place a red flag and, in addition, by night a red light, on the same side of the track as the engineer of an approaching train so that it will be clearly in his view, at least,—

Three thousand six hundred feet from the defective or working point, if there is no down grade towards the obstruction.

Five thousand four hundred feet if there is a down grade within one mile of the obstruction, or as much farther as may be necessary to insure full protection.

(c) Place two torpedoes (not more than 200 or less than 100 feet apart) on the rail on the same side as the engineer of an approaching train, 300 feet in advance of the red signal.

(d) Between sunset and sunrise and during stormy, foggy, or smoky weather conditions flagmen must be placed instead of the outer signals referred to in clause (b).

4. Trains stopped by flagmen, as per rule 2 and rule 3 (d), shall be governed by his instructions and proceed to the working point or working point signal, as the case may be, and there be governed by signal or instructions of the foreman in charge.

5. Trains stopped by red signal, as per rule 3 (b) shall replace the torpedoes exploded and proceed to the working point signal, and there be governed by signal or instructions of the foreman in charge, unless in the meantime stop signal has been removed.

6. In the event of train order protection being provided the defective or working point must be marked by signals placed in both directions as follows:—

Yellow flags by day and in addition yellow lights by night, 3,600 feet from the defective or working point; red flags by day, and in addition red lights by night, 600 feet from the defective or working point, on the same side of the track as the engineer of an approaching train; except on double track, where trains run to the left, in which case signals shall be placed to the left-hand side as seen by an engineer of an approaching train, and there is a clear view of at least 1,200 feet.

7. When weather or other conditions obscure day signals, night signals must be used in addition.

8. "Frequent service" shall mean nine or more trains a day and "fast train service" shall mean a service at a speed of thirty-five miles or more an hour.

9. That the Brennan signal device as approved by the Board, or a signal of an equally serviceable type attached to the base of the rail, to be approved by the Board, be used to display the signals directed to be provided under rules 3 (b) and 6 (yellow signal) of this order and rule 35 (yellow signal) of the Uniform Code of Operating Rules.

10. Flagmen must each be equipped for daytime with a red flag and four torpedoes, and for night time, and when weather or other conditions obscure day signals, with a red light, a white light, four torpedoes, three red fuses, and a supply of matches.

And it is further ordered: That the foregoing rules be printed in the working time-tables of the said railway companies for the guidance of all employees.

Subdivisions to be named setting out which of the rules are applicable to each.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Ottawa, November 1, 1918

No. 16

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Car Demurrage Rules.

File No. 1700.234.

RULING.

The CHIEF COMMISSIONER:

A letter has been received by the Board from the James Shearer Company, Limited, of Montreal, as follows:—

“At our yards in Montreal we are practically tied up on account of the epidemic of Spanish influenza, and we find that the Eagle Lumber Company at St. Jerome, to whom we are shipping material to be dressed for us, are in the same predicament, and in all probability cars will be under demurrage before we can even start to unload them.

“As this is a matter entirely beyond our control, we would ask if it is not possible to make special arrangements to have the demurrage charges withheld until the epidemic subsides.

“We trust you will be able to do something to relieve us, otherwise we shall be heavily penalized by the railways due to the unavoidable illness of our employees.”

The car demurrage rules do not cover a case of this character. While the rules arrived at were largely the result of negotiation and agreement between shippers and companies, a condition such as the present was never contemplated. There is no doubt as to the effect of the present epidemic. The railways themselves are unable to handle freight concurrently. A large number of cars set out for movement cannot be moved simply because so many of the railroad men are suffering from the influenza that it is impossible for the railways to move them. This fact is well known, and has been recognized by the shipping public.

Precisely the same conditions apply to the employees of industrial and other plants. As I see it, it would be absolutely unfair and improper to penalize shippers who cannot accept cars owing to the ravages worked by the epidemic on their employees. The matter is one absolutely beyond their control. Demurrage ought not to be charged under such conditions; and in my opinion the railways ought to be advised that demurrage ought not to be charged, and that if necessary the appropriate amending order will be made as of this date.

October 25, 1918.

Commissioner Boyce concurred.

*Re General Interswitching Service.
General Order No. 230.*

File No. 6713.

Case No. 2846.

JUDGMENT.

The CHIEF COMMISSIONER.

The Board's General Order No. 230 changed the interswitching practice in that it compelled railway companies to give interswitching instead of merely extending it at certain points as a matter of grace, and also threw open the interswitching service, not only to and from private sidings, but also to team tracks.

In thus placing at the convenience and use of competing lines the terminal facilities of the originating carrier, and as a measure of justice to the originating carrier, the order contained the following clause:—

"14. Except as hereinafter provided, the tolls herein prescribed shall not apply to deprive the initial carrier of the line haul by a reasonable route of traffic loaded or to be loaded on its railway, including sidings connecting therewith, provided it furnishes at the destination, itself or through its connections or by interswitching, the same delivery and facilities as the competing carrier at no greater charge."

Owing to protests made, the operation of the order has been stayed. The protests that have been made have been protests from shippers or Boards of Trade, and have reference entirely to the above paragraph. These protests point out that as a matter of fact interswitching in the past has freely been accorded by the railways to private sidings.

The protest of the Border Chamber of Commerce of Windsor may be quoted as illustrative of the position taken by those eastern shippers who objected to the provision. The protest reads as follows:—

"In reference to your Board's Order No. 230 on interswitching, permit me to lodge the protest of this Chamber to section 14 of this order.

"While our shippers recognize in general practice the right of the initial carrier to the line haul on business originating on its line or private sidings therefrom, providing of course said carrier can provide the service, still the majority of our members feel that the right to route their traffic should not be taken away from them.

"While forty-eight hours' time which the Board's order provides in which the initial carrier may place equipment probably seems reasonable, when you add another forty-eight hours or maybe ninety-six hours, to get equipment switched from another line, same may easily constitute a serious delay.

"Then again, when you provide by tariff the assurance of the line haul to the initial carrier of all traffic it originates, you take away from that carrier the main incentive for the performance of a service satisfactory to the shipper.

"We are not aware of any case of a shipper depriving initial carrier of his just proportion of road haul, but feel that the possibility of competition in the routing of traffic should not be interfered with and, therefore, that section 14 of the Board's Order No. 230 should be eliminated.

"We venture the further opinion that the majority of shippers and railways will concur in this request."

The protest of the Shippers' Section of the Winnipeg Board of Trade is also made against the same section. The protest in part reads as follows:—

"The Shippers' Section of the Winnipeg Board of Trade protests against the rulings embodied in section 14 of General Order No. 230, and asks that they be rescinded.

"In providing that the railway on which traffic originates is entitled to the line haul this section believes the Board is depriving shippers of a valuable right they have always enjoyed of routing their cars along the line they desire to use. The enforcement of it will have a radical effect upon the whole service of freight in carlots. It involves the removal of the only competition now remaining to shippers—competition in service.

"The alternative given to shippers of paying the additional freight to the point of interchange means an additional tax or increase in rates, for which no justification has been advanced."

A similar position has been taken by the Canadian Manufacturers Association. These protests are all made in ease of the position of the large shippers who have private sidings and therefore of the movement which, in the great majority of cases, has constituted by far the greater percentage of interswitching operations.

On further consideration it would appear fair that the extension of the inter-switching practice to team tracks should not be done at any inconvenience or detriment to industries which in the past have had the service.

The Board's Chief Traffic Officer has had this question and the interlocking question of free cartage (which has frequently been referred to as an unjust and unfair discrimination extended in favour of the larger shippers by certain railways) up with the railway companies and some of the larger shippers.

The railway companies do not agree unanimously to an amendment of Clause 14, the effect of which would be to restore the status of private sidings to their original position. In view of the fact, however, that the compulsory interswitching will enable the companies to use the tracks the one of the other, the larger systems now agree as follows:—

"In view of the services and tolls herein provided for, schedules authorizing any arrangement or device, such as free or assisted cartage, cartage allowance or the like, intended to equalize the facilities of competing carriers at common points, shall be withdrawn and cancelled within three months from the date of issuance of this order.

"Provided that if a carrier deem itself entitled to such equalization arrangements in a particular case, it may, within six months from the date of issuance of this order, or within six months following the establishment of interchange facilities at any particular point hereafter, apply to the Board for relief."

Notwithstanding the position of some of the railway companies I would give effect to the protests of the Canadian Manufacturers' Association, the Winnipeg Board of Trade, and the Border Chamber of Commerce of Windsor, as above set out, and would strike out paragraph No. 14 of General Order No. 230, substituting the following therefor:—

"Should a team track shipper expressly order his shipment to be inter-switched to another carrier, notwithstanding that the initial carrier upon whose team tracks the car has been loaded can furnish at the destination, itself, or through its connections, or by interswitching, the same delivery and facilities as the said other carrier at no greater charge, the said initial carrier may, in lieu of the toll prescribed in section 6, charge and collect its ordinary published rate to the interchange, which rate shall be a lawful additional charge against the shipment;

"Provided, however, that this alternative shall not be lawful, and section 6 shall apply, if within forty-eight hours after the shipper has requested it, the said initial carrier fails to place a suitable car reasonably convenient for loading."

October 26, 1918.

Commissioners Goodeve and Boyce concurred.

GENERAL ORDER No. 252.

In the matter of the interswitching of freight traffic.

File No. 6713.

Case No. 2846.

Dated at Ottawa, this 26th day of October, 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Under the authority conferred upon it by the Railway Act, the Board hereby rescinds its General Order No. 230, dated May 17, 1918, the effective date of which was postponed from July 1, 1918, to August 1, 1918, by General Order No. 239, dated June 19, 1918, to October 1, 1918, by General Order No. 243, dated July 25, 1918, and to November 1, 1918, by General Order No. 250, dated September 16, 1918, and doth order and declare as follows:—

1. For the interpretation, application, and operation of this order,—

(a) "Interswitching" means the movement of freight in cars between the unloading or loading tracks of one carrier, hereinafter called the "terminal carrier," and the point of interchange with another carrier by whom, singly or jointly with a further carrier, the said traffic has been carried from its point of shipment or is to be carried to its destination, hereinafter called, singly or jointly, the "line carrier," both the terminal carrier and the line carrier which interchanges with the terminal carrier being subject to the jurisdiction of the Board; the said movement being performed with or without the aid of an intermediate carrier whether subject or not subject to the jurisdiction of the Board, hereinafter called the "intermediary."

(b) The "interchange" means the junction between the terminal carrier and the line carrier, or between the terminal carrier and the intermediary, nearest to the point of loading or unloading of the car.

2. This order does not apply,—

(a) To tracks used by the terminal carrier for the transfer of freight between cars and its freight warehouse, or for the purpose of transshipment from car to car, nor to tracks otherwise set apart for its own working purposes, except team tracks;

(b) To joint movements which both begin and end in the same terminal or group of terminals or adjoining switching districts;

(c) To cars which, having been once properly interswitched for unloading, are reconsigned for unloading elsewhere within the same terminal or group of terminals.

3. Subject to the provisions of section 14, carriers shall at all times, according to their powers, furnish an interswitching service equal to the service accorded their own traffic at all points where interswitching facilities are, or may hereafter be, provided, under the circumstances and at the tolls herein prescribed;

Provided that no terminal carrier or intermediary shall be obliged hereunder to make any movement exceeding the distances herein specified at the tolls herein prescribed, and that the said distances be irrespective of the location of the interchange or of yard limits or boundaries.

4. The toll of an intermediary subject to the jurisdiction of the Board shall not exceed, irrespective of weight, three dollars per car for any distance within and including three miles, or three dollars and fifty cents per car for any distance exceeding three miles to and including four miles.

5. If the traffic is loaded or unloaded upon private sidings connecting with the railway of the terminal carrier, or directly from or into an industry, elevator or yard abutting upon its tracks (commonly known as industrial sidings), or in any public stock yard, the toll of the terminal carrier shall not exceed one cent per 100 pounds for the actual weight thereof, subject to the minimum weight of the line carrier's tariff, for any distance within and including four miles from the interchange; except that the terminal carrier shall be entitled to a minimum charge of three dollars per carload of traffic included in the seventh, eighth and tenth classes of the Canadian Freight Classification, and five dollars per carload of all other traffic.

6. The toll of the terminal carrier upon all traffic other than that referred to in section 5, including traffic to or from team tracks, shall not exceed two cents per 100 pounds for the actual weight thereof, subject to the minimum weight of the line carrier's tariff, for any distance within and including four miles from the interchange; except that the terminal carrier shall be entitled to a minimum charge of six dollars per car.

7. Not less than the following proportions of the tolls herein prescribed shall be absorbed in the rate of the line carrier and the remainder shall be an addition thereto:—

(a) One-half of the tolls charged by the terminal carrier under section 5 as qualified by section 9.

(b) Of the tolls prescribed in section 6 one-half of the tolls permitted under section 5, as qualified by section 9, as if the movement were to or from private sidings.

(c) One-half of the herein prescribed or lower tolls of each intermediary, if any, whether subject or not subject to the jurisdiction of the Board.

Provided that the line carrier may, unless its tariff rate is lower, charge and collect twelve dollars per car for its haul between the interchange and the point of shipment or destination when by reason of such absorption its line charges would otherwise be less than that amount.

8. The appropriate tolls hereinbefore prescribed shall not be exceeded, for the distances herein specified, in each direction for the movement from and the return to the line carrier of so-called off-line transit traffic, and the line carrier shall be subject to the absorption provisions of section 7 only when its through rates are the sum of its published rates to and from the stop-over point.

9. If an extra car, commonly known as an idler, is used solely to take care of an overhang of long articles loaded on an open car, it shall be charged by the terminal carrier not more than two-thirds of the herein prescribed appropriate toll for the minimum weight of the line carrier's tariff, except that the terminal carrier shall be entitled to a minimum charge of three dollars per car. If interposed between two cars in the same shipment to protect an overhang from each the idler shall be charged for once only.

10. No charge shall be made for the accessory interswitching of the empty car. If the car is loaded in both directions the interswitching toll shall be charged for each movement.

11. Subject to the provisions of section 14, nothing herein contained shall prevent the line carrier from absorbing the entire toll or tolls charged for interswitching competitive traffic, provided that the traffic and movements so treated are clearly defined in its tariffs.

12. Traffic to or from the United States shall be subject to the provisions of this order at the point of shipment or destination in Canada.

13. If an exceptional rate is published to apply to or from the tracks of the carrier line only, the ordinary rate which includes the right of interswitching shall be plainly indicated in the same schedule, and the latter rate shall not exceed the former by more than the appropriate toll herein prescribed for the interswitching service.

14. Should a team track shipper expressly order his shipment to be interswitched to another carrier, notwithstanding that the initial carrier upon whose team tracks the car has been loaded can furnish at the destination thereof, itself or through its connections or by interswitching, the same delivery and facilities as the said other carrier at no greater charge, the said initial carrier may, in lieu of the toll prescribed in section 6, charge and collect its ordinary published rate to the interchange, which rate shall be a lawful additional charge against the shipment;

Provided, however, that this alternative shall not be lawful, and section 6 shall apply, if within forty-eight hours after the shipper has requested it the said initial carrier fails to place a suitable car reasonably convenient for loading.

15. In view of the services and tolls herein provided for, schedules now in effect authorizing any arrangement or device, such as free or assisted cartage, cartage allowance or the like, intended to equalize the facilities of competing carriers at common points, shall be withdrawn and cancelled within three months from the date of issuance of this order;

Provided that if a carrier deem itself entitled to any such equalization arrangement in a particular case, it may, within six months from the date of issuance of this order, or within six months following the establishment of interchange facilities at any particular point hereafter, apply to the Board for relief.

16. The schedules to give effect to this order shall be published and filed to come into force on the first day of January, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27764.

In the matter of the application of the Canadian Pacific Railway Company for an order extending the time within which it is required by the order of the Board No. 27505, dated July 30, 1918, to construct a two-pen stockyard at Cairns, Alberta.

File No. 16989.

FRIDAY, the 11th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the time within which the Canadian Pacific Railway Company is required to construct a two-pen stockyard at Cairns, Alta., be, and it is hereby further extended until the 15th day of November, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27765.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," under sections 237 and 178 of the Railway Act, for authority: (1) to construct a diversion in lieu of a portion of the road allowance between concessions 6 and 7 in the township of Albion, county of Peel, in the province of Ontario, at or near mileage 28.9, on the applicant company's MacTier subdivision, said diversion to be carried under the railway tracks; (2) to close the existing undercrossing by which the original road allowance is carried under the applicant company's railway; and (3) to take without the consent of the owner for the purpose of constructing the said diversion and constructing a road from said diversion at grade across the tracks of the applicant company to provide access from said diversion to the applicant company's Cedar Mills railway station for the accommodation of traffic thereat, certain lands forming part of lot No. 23, in the seventh concession of the said township of Albion, all as shown in red on the plan, profile, and book of reference combined, dated July 18, 1918, on file with the Board under file No. 2216.

FRIDAY, the 11th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, no objection being offered by Henry Matson, the property owner affected, although duly notified as appears by proof of service of notice of the application, and the consent of the municipal council of the county of Peel by resolutions passed June 12, 1918, and June 13, 1918, filed,—

It is ordered: That subject to and upon the terms of the said resolutions of the county of Peel, the applicant company be, and it is hereby, authorized: (1) to construct a diversion in lieu of a portion of the road allowance between concessions 6 and 7 in the township of Albion, county of Peel, in the province of Ontario, at or near mileage 28.9 on the applicant company's MacTier subdivision, the said diversion to be carried under the railway tracks; (2) to close the existing undercrossing by which the original road allowance is carried under its railway; and (3) to take without the consent of the owner for the purposes aforesaid, certain lands forming part of lot No. 23, in the Seventh concession of the said township of Albion, all as shown in red on the said plan, profile, and book of reference, combined, on file with the Board under said file No. 2216.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27763.

In the matter of the application on behalf of coal operators in the Drumheller District, province of Alberta, for an Order directing the Canadian Pacific and the Canadian Northern Railway Companies to provide transfer facilities between their respective railways at a point slightly to the west of Baintree Station, on the Canadian Northern Railway.

File No. 21181.

SATURDAY, the 12th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed on behalf of the railway companies and the report and recommendation of the Chief Operating Officer and the Assistant Chief Engineer of the Board,

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, required to construct a transfer track between its railway and the railway of the Canadian Pacific Railway Company at a point west of Baintree station, in the province of Alberta, as shown on the plan dated September 12, 1918, on file with the Board under file No. 21181; the work to be completed within thirty days from the date of this order, and the cost of constructing the said transfer track to be apportioned equally between the Canadian Pacific and the Canadian Northern Railway Companies.

And it is further ordered: That the order of the Board No. 27170, dated April 30, 1918, made herein be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27773.

In the matter of the complaint of the Canadian Manufacturers' Association against the increases shown in the special tariffs filed by railway companies on what are described as "Building Materials."

File No. 28678-10.

TUESDAY, the 22nd day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon its appearing that commodity-tariffs published and filed by the Grand Trunk, Canadian Pacific, Canadian Northern, Toronto, Hamilton and Buffalo, Quebec, Montreal and Southern, Napierville Junction, Dominion Atlantic, Glengarry and Stormont, and Chatham, Wallaceburg and Lake Erie Railway Companies, and the New York Central, Michigan Central, Pere Marquette, and Wabash Railroad Companies show rates that have been increased more than 25 per cent provided for by section 1 (b) of the Order in Council, P.C. 1863, dated July 27, 1918, the said tariffs

being those applicable to building, road and drainage materials, and raw materials therefor; and upon reading the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said rates, to the extent that they exceed those provided for by the said Order in Council, be, and they are hereby, disallowed, and the said railway and railroad companies are hereby permitted, on one day's notice to the public and to the Board, to republish and refile the said rates in accordance with the said Order in Council.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27776.

In the matter of the application of the Canadian Northern Railway Company, under section 261 of the Railway Act, for leave to open for the carriage of traffic its line of railway from Eston to Glidden, in the province of Saskatchewan, a distance of 20 miles.

File No. 19221.115.

THURSDAY, the 24th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application, the affidavit filed in support thereof, and the report of the Assistant Engineer that in his opinion the opening of the said line of railway for the carriage of traffic would be reasonably free from danger to the public using the same,—

It is ordered: That leave be, and it is hereby, granted the applicant company to open for the carriage of traffic its said line of railway from Eston to Glidden, in said province of Saskatchewan, a distance of twenty miles, subject to and upon the condition that the operation of trains over the portion of railway from mileage 101 to mileage 104.5, a distance of 3.5 miles, be limited to a speed not exceeding eighteen miles an hour.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27777.

In the matter of proposed increased tolls and charges of the Bell Telephone Company of Canada.

Case No. 955.

THURSDAY, the 24th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
A. S. GOODEVE, *Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Whereas the Bell Telephone Company of Canada has filed with the Board tariffs showing increased tolls and charges to take effect November 20, 1918.

It is ordered: That the following schedules of the Bell Telephone Company of Canada, issued to become effective November 20, 1918, be, and they are hereby, suspended pending hearing on dates to be fixed by the Board:—

Long distance tariff.....	C.R.C. No. 3718
Section 29.....	C.R.C. No. 3100
1st revised sheet No. 2, Section 16.....	C.R.C. No. 3100
3rd revised sheet No. 1, Section 16.....	C.R.C. No. 3100
2nd revised sheet No. 2, Section 25.....	C.R.C. No. 3100
Original sheet No. 3, Section 25.....	C.R.C. No. 3100

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27779.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "Applicant Company," under Section 258 of the Railway Act, for approval of the location of its station at Raymond, Alta., as shown on the plan dated Calgary, August 1, 1912, corrected September, 1917, on file with the Board under file No. 28616.

THURSDAY, the 24th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Edmonton, June 11, 1918, in the presence of counsel for the applicant company, the Government for the province of Alberta being represented at the hearing, and what was alleged; the municipality of the town of Raymond consenting,—

It is ordered: That the location of the applicant company's station at Raymond, Alta., as shown on the said plan on file with the Board under file No. 28616, be, and it is hereby, approved, subject to the condition that the crossing of Broadway be narrowed to a 66-foot street across the applicant company's right of way, the street to continue on its present line, and the western boundary of such street as shown on the said plan to be the western boundary of the 66-foot street through the applicant company's right of way; the station building to be erected in accordance with the applicant company's A-2 Standard plan on file with the Board.

H. L. DRAYTON,
Chief Commissioner.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Re Heated Car Service, Okanagan Valley.

File No. 18855.24.

JUDGMENT.

The CHIEF COMMISSIONER:

This question has been up several times before the Board, and it is much to be regretted that the position is such that a proper and final solution of the question cannot be arrived at.

Before the war broke out the Canadian Pacific Railway Company had sufficient refrigerator cars. Since the war they have been obliged to use a very large proportion of their refrigerator cars in the overseas movement of fresh meats. That overseas movement is absolutely essential. It involves not only the use of a large number of cars, but also the long detention of cars owing to the haul to the Atlantic. The unfortunate result is that fruit districts are not getting the service they formerly enjoyed. It is one of the inevitable results of the war. There is great difficulty in obtaining materials, and particularly the essential metals, that are required for construction, and the company has enough refrigerators on hand for its normal business.

The question is one which the Board's Chief Operating Officer has had up regularly with the company. His efforts have been to get lined and racked box cars as the best possible substitute for the refrigerators which cannot now be furnished. As a matter of fact he reports that to-day there are sufficient cars so lined and racked for the service. They are without heaters and the Board has endeavoured to have heaters supplied. The Canadian Pacific have gone on the market for heaters and have been enabled to purchase a considerable number. This number, however, falls far short of supplying heaters for all cars which may now be required.

Under the Act, the company ought to supply facilities to the extent of its powers. The position taken by the company has been that the Board ought not to order the supply of heaters. The company points out that the United States Railroad Administration, in adjacent American territory, refuse to supply any heaters, and that the fruit growers in American territory not only supply their own stoves but also line and rack their own cars at their own expense.

In my opinion the heaters ought to be supplied to the fullest extent possible, at the costs and charges covered by the appropriate tariffs which are already filed. The company's heaters will not be sufficient to cover the whole movement, and in cases where they are not sufficient, and either stoves or heaters are supplied by the shippers, the company ought to be entitled to no remuneration under the tariff for heaters, and the company should also return the heaters so supplied from destination to point of origin free of cost to the shipper. The company has been so directed and tariff accordingly filed.

Another question which has been much discussed is the question of the appointment of a man to follow up shipments and see that stoves are properly looked after. The shippers desire that the company should supply the men. The shortage of men on the company's systems is well known. Over and above this, in my mind there is absolutely no doubt but that shipments will receive far better attention if the accompanying messenger, in cases where messengers have to be employed, is a messenger who has a direct interest in the goods themselves. Existing tariffs now provide that the shippers' messengers transported under such conditions get free transportation both coming and going.

In my view, it is not feasible at the present to order more than this.

October 25, 1918.

Commissioners Boyce and Goodeve concurred.

GENERAL ORDER No. 254.

In the matter of the complaints of the Dominion Brokers, Limited, Calgary, Alta., Plunkett & Savage, Calgary, Alta., the Armstrong Growers' Association, Armstrong, B.C., and the Okanagan United Growers, Limited, Vernon, B.C., against the requirement of the Canadian Pacific Railway Company that, owing to the shortage of refrigerator cars and heaters, shippers of vegetables in British Columbia furnish stoves or other method of heating lined box cars, equipped with floor racks, in substitution for heated refrigerator cars.

File No. 18855.24.

FRIDAY, the 25th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the matter at Vancouver, B.C., June 6, 1918, Calgary, Alta., June 10, 1918, and Edmonton, Alta., June 11, 1918, and what was alleged, and upon reading the further submissions filed,—

It is ordered: That the Canadian Pacific Railway Company, according to its powers and as required by shippers, supply heaters in all cars furnished for the receipt of vegetables in carloads, subject to the charges provided for in its published and filed tariff for cars so supplied and furnished;

And it is also ordered: That heaters supplied by shippers when the said railway company is unable to comply with the provisions of this order be returned by the said railway company, and by other railway companies subject to the jurisdiction of the Board in cases of joint movements, free of charge to the point of shipment of the said vegetables;

And it is further ordered: That schedules giving effect to this order be forthwith published and filed so as to give one day's notice to the Board.

H. L. DRAYTON,
Chief Commissioner.

Application of the Canadian Pacific Railway Company for an Order amending the Order of the Board No. 27225, dated May 15, 1918, issued on the application of the Canadian Northern Railway Company for approval of proposed trackage serving elevator sites at Current River, Port Arthur, Ont., to provide for separate access for the Canadian Northern Railway Company and the Applicant Company to the elevators.

File No. 26825.13.

JUDGMENT.

The CHIEF COMMISSIONER :

This matter has to be considered again by the Board on the application of the Canadian Pacific Railway Company for an Order amending the Order of the Board No. 27225, dated the 5th day of May, 1918, issued on the application of the Canadian Northern Railway Company for approval of proposed trackage serving the elevator sites of the United Grain Growers, Limited, the Saskatchewan Co-operative Elevator Company, Limited, and Jas. Richardson & Sons, Limited.

The three elevators in question are important industries located where they are under an agreement with the town of Port Arthur, and they have been located where they are with a view of obtaining equal facilities both from the Canadian Pacific and the Canadian Northern Railway systems.

The railway companies, in the first instance, proceeded to develop their facilities by constructing switches from their systems direct to the different elevators. As a result of this plan, had it been carried out, the Canadian Pacific would have had from the west four switches, with the appropriate subsidiary tracks to each elevator, the Canadian Northern would have constructed a similar number from the east, and when the United Grain Growers, Limited, had built their proposed large elevator to the east of their present Hospital elevator the number of switches would again have had to be increased.

As a result five diamond crossings, with all their possibilities of delays and danger to traffic, would have become necessary. The situation being on its face not desirable if any better remedy could be applied, the Canadian Northern made an application the effect of which would be to confine the switching to all the elevators to leads from the east, in other words, to leads from the Canadian Northern Railway.

The matter was gone into by the engineering and the operating departments, and as a result of their recommendations the Order now under review was made. Under this Order diamond spurs were eliminated. The Jas. Richardson & Sons' elevator on the west had connection only to the west, and the new Saskatchewan Hospital elevator, now nearing completion, would be in the same position. The present main elevator of the Saskatchewan Co-operative Elevator Company would be served by switches both east and west.

While, with the exception of the main Saskatchewan Elevator Company, none of the elevators got service east and west under the Order, the facilities on both lines were reserved to all the elevators, as under the arrangement adopted the Canadian Pacific was allowed to run to the east and use the Canadian Northern main line track for switching purposes, while on the other hand the Canadian Northern was allowed to use the service tracks of the Canadian Pacific to the west. This, of course, cannot be described as an ideal arrangement, but it was thought to be better and safer than the old plan with its large number of diamond crossings exposed to the operations of a joint switching service.

Further evidence taken at the last hearing endorses, the scheme, in so far as the physical layout is concerned, that the Order appealed from contemplates, and the operating difficulties have now been remedied as a result of agreement between the companies. Under this agreement the companies are to perform the local switching service the one for the other, without charge against the traffic. The actual physical work of switching will be done by the Canadian Northern for the United Grain

Growers and the Saskatchewan Co-operative Elevator Company from the east and by the Canadian Pacific for the Jas. Richardson & Sons and the Saskatchewan Company from the west.

As a result of the discontinuance of the diamond system, the present Canadian Pacific spur serving the United Grain Growers and the Canadian Northern spur serving the Jas. Richardson & Sons' elevator will be taken up. The same spurs would have had to be discontinued under the Order in question.

The Jas. Richardson & Sons, Limited, object to the removal of the Canadian Northern spur serving them. Their position is set out in the following wire:—

“When we purchased site we were guaranteed individual track approaches Canadian Pacific and Canadian Northern, both by parties selling site and city Port Arthur, one railroad serving us business both roads would be commercial handicap and tend to inefficient operation, and would give one railroad access to and control of the other business, all of which would be detrimental to our business and depreciate the sale of our property. We are expending one and one-half million dollars erection of elevator and equipment and expect to further develop the property in future in matter that will require additional service from railroads that at present is not apparent.”

Under the arrangement that is now made the Jas. Richardson & Sons' elevator will get a better service than it is possible to get under former conditions. In my opinion the arrangement that has been come to between the companies ought to be given effect to and the appropriate Order issue, subject to the condition that the cars of one company set out for placing by the switching service of the other shall not be discriminated against, but shall be lifted and placed having regard to their priority on the stand-out tracks.

November 4, 1918.

Commissioners Goodeve and Boyce concurred.

ORDER No. 27772.

In the matter of the application of the Toronto Board of Trade on behalf of the Ontario Turnip Shippers' Association for an order suspending the proposed tariffs of the Grand Trunk and Canadian Pacific Railway Companies to take effect October 22, and of the Toronto, Hamilton and Buffalo Railway Company to take effect November 1, 1918, to apply on turnips, in carloads, from points in Ontario to points in the United States.

File No. 28106.1.

OTTAWA, Monday, October 21, 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, October 17, 1918, the applicants and the railway companies being represented at the hearing, and what was alleged,—

It is ordered: That the Grand Trunk, Canadian Pacific, and Toronto, Hamilton and Buffalo Railway Companies be, and they are hereby, required to publish and file tariffs of joint through rates on turnips, in carloads, from the shipping points of the

said railway companies to the principal destinations in the southern United States, as arranged between the parties, that shall not exceed the lowest combination of rates to and beyond Buffalo, New York, or to and beyond the basing points commonly called the Ohio River Crossings, the said tariffs to become effective not later than November 1, 1918, and may be filed on one day's notice, subject to the consent of the Interstate Commerce Commission.

And it is also ordered: That the said tariffs, when effective, shall supersede the tariffs complained against.

And it is further ordered: That the order of the Board No. 27439, dated July 17, 1918, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27829.

In the matter of section 274 of the Railway Act, as amended by section 6, 7-8 George V, chapter 37, and the application of the city of Toronto for the approval of By-law No. 7452, passed by the council of the corporation of the city of Toronto on July 26, 1915, providing as follows:—

- “3. No person shall blow or sound or cause to be blown or sounded the steam whistle of any locomotive or other engine for the purpose of signalling to make up trains, or in shunting operations, or when such locomotive or engine is approaching any highway crossing in the city of Toronto, or for any purpose or at any time whatsoever, except when absolutely necessary as a signal of danger.”

File 8342.4.

THURSDAY, the 24th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the submissions in support of the application and upon the recommendation of the Chief Operating Officer of the Board,—

It is ordered: That said By-law No. 7452, a certified copy under the seal of the corporation being filed with the Board, be, and it is hereby, approved.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27781.

In the matter of the application of the Quaker Oats Company for an order suspending various schedules of the Canadian Pacific Railway Company published to become effective November 1, 1918, increasing its milling-in-transit charge on grain east of Fort William from one to two cents per 100 pounds.

File No. 26575.

MONDAY, the 28th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Complaints having also been filed with the Board against the proposed increased milling-in-transit charge by the Winnipeg Board of Trade, the Western Canada Flour Mills Company, Winnipeg; N. M. Patterson and Company, Winnipeg; and the Anchor Elevator Company, Winnipeg,—

It is ordered: That the effective date of all schedules filed by the Canadian Pacific, Canadian Northern, Grand Trunk, and Grand Trunk Pacific Railway Companies, providing for an increase to two cents per 100 pounds for milling-in-transit, be delayed pending hearings and further order of the Board.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 253.

In the matter of the complaint of the Canadian Manufacturers' Association against the increased carload minimum weight for crushed stone published by the Grand Trunk, Canadian Pacific, and Canadian Northern Railway Companies, effective October 1, 1918.

File No. 28192.7.

TUESDAY, the 29th day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, October 17, 1918, and what was alleged, and its appearing that certain carriers subject to the jurisdiction of the Board have published and filed schedules increasing certain carload minimum weights to conform to circular No. 75 of the Canadian Railway War Board, dated at Montreal, August 5, 1918,—

It is ordered: That the said schedule be amended as follows, namely:—

1. To provide that the minimum weight for crushed stone and other building and paving materials, now shown as the marked capacity of the car but not less than 60,000 pounds, be the marked capacity of the car but not exceeding the actual weight when cars are fully loaded subject to the said minimum of 60,000 pounds.

2. To provide that no greater weight shall be charged for the said materials than that to which the shipper may be restricted by the carrier by reason of any track bearing limitations.

3. That the amendments to give effect to this order come into force not later than November 18, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27809.

In the matter of the application of citizens of Dapp, Alta., for an order directing the Edmonton, Dunvegan and British Columbia Railway Company, hereinafter called the "railway company," to construct a suitable station at Dapp, Alta., and install a telephone in the same.

File No. 28869.

THURSDAY, the 31st day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company, and upon the report and recommendation of an inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the railway company be, and it is hereby, required to erect a shelter at Dapp, Alta., for the accommodation of freight and passengers and to provide for the heating and lighting of the same upon the arrival and departure of trains; the said shelter to be completed by the 15th day of December, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27812.

In the matter of the application of the Grand Trunk Pacific Railway Company for an order extending the time within which it is required by the order of the Board No. 26956, dated January 31, 1918, to construct a stockyard at Ardrossan, Alta.

File No. 28402.

THURSDAY, the 31st day of October, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application,—

It is ordered: That the time within which the work of constructing a stockyard at Ardrossan, Alta., required by said order of the Board No. 26956 be completed, be, and it is hereby, extended until the 15th day of December, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27815.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 253 of the Railway Act, for approval of the location and detail plans of its proposed new station to be erected at Middlemiss, in the township of Ekfrid, county of Middlesex, and province of Ontario, in lieu of the station destroyed by fire on March 21, 1918, on file with the Board under file No. 28862.

MONDAY, the 4th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board and the consent of the township of Ekfrid filed,—

It is ordered: That the location and detail plans No. A-4-52A, dated Toronto, June 28, 1918, and No. 476-41, dated Montreal, July 15, 1918, of the applicant company's proposed new station at Middlemiss, in the township of Ekfrid, county of Middlesex, and province of Ontario, on file with the Board under file No. 28862, be, and they are hereby, approved.

H. L. DRAYTON,
Chief Commissioner.



The Board of

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Re Toronto, Hamilton and Buffalo Railway Kinnear Yard and adjacent applications.

Files Nos. 28230 and 28230.6.

JUDGMENT.

The Chief COMMISSIONER:

This question was left for some considerable time with the parties with such directions as the Board thought would enable a proper solution of the immediate difficulty to be solved. Reference may be made to my previous memoranda on the subject. No final conclusion has been arrived at between the parties; they are still as far apart as ever, and the company is insisting upon its statutory rights and orders of expropriation. In view of the necessities of public transportation which have been shown, it cannot be denied.

The case was formerly considered merely from the standpoint of the city's own property. The company now desires to expropriate the property of the Pressed Brick Company. As a result, the object sought by the Board namely, that in the final consideration of Hamilton's problem the parties should be as nearly as possible in the same position as they are now, would obtain only in so far as the city's property is concerned, and not to other properties acquired for the purpose of improvements. The effect, therefore, would be to weight the company's claims, and to that extent render more difficult a permanent solution of Hamilton's problem.

A memorandum of the railway company, dated September 30, 1918, in support of the present application for reconsideration of the whole matter, in view of the inability of the parties to reach an agreement—to which I have already referred—may be usefully quoted here to show the position from the railway company's standpoint:—

"The company's position may shortly be stated as follows:—

"There is absolutely no question that the railway facilities on the company's line have proved insufficient to meet the extraordinary demands of public traffic created by war emergency conditions. This insufficiency is obvious; it is evidenced not only by the numerous complaints made from time to time by Hamilton shippers to the Board, but also by the report of the Board's own Operating Officer, which directly required, amongst other things, double-tracking between Hamilton and the frontier, and the construction of large yard accommodation at Bridgeburg.

"These improvements by themselves, unless accompanied by proper yard extensions in Hamilton would be valueless. Public necessity for extended facilities has been absolutely made out. It is equally clear that the only point

where it is at all feasible to make these extensions is in the Kinnear yard and as applied for by the company. The Board's expert officers have so found, and this necessity is evidenced by the judgments which are now complained of.

"Under these circumstances, the company contends that it became the duty, and indeed the statutory obligation, of the Board to make such Order as contemplated by the Railway Act as would enable public traffic to be properly accommodated, including orders for the expropriation of the necessary lands.

"The judgments delivered render it possible for the railway company to temporarily extend its Kinnear yard, and to do the work, if the railway company had moneys available to carry out the work without financing. This, however, is not the fact, and it is further a point which was not raised before or considered by the Board either at the original hearing or in the company's application for a re-hearing which has not been granted.

"The work which the company must do in Order to properly meet the demands of public transportation made upon it involves the expenditure in all of about \$880,000. The company's temporary financing has been done by short date notes, and its outstanding obligations in this connection and in overdrafts necessary for this work amount in all to \$650,000.

"It will be obvious to the Board that as bond mortgages are increased in number, or as advances are increased under them, the security should also be increased. It will also be obvious to the Board that a five-year lease, subject to sudden termination, cannot be regarded as an additional security for bond mortgages which may have to be issued in the future, or which have been issued in the past, but having a cumulative effect in that all railway properties become subject to their operation as and when acquired, and under which large new loans will have to be made.

"It is plain that the Kinnear yard cannot be regarded by itself. The added bond security afforded by the yard at Bridgeburg largely becomes valueless unless its use is rendered possible by the continuance of Hamilton's facilities. This difficulty applies not only to Bridgeburg yard but indeed to the additions made to the main line itself. The whole railway property must be considered as a unit, and the result of the subtraction of one necessary unit from it is not represented by the value of that unit by itself, but by its cumulative effect on the assets, earning power, and business capacity of the company's properties as a whole.

"The company feels that in an endeavour to assist Hamilton an injustice has been done to it. The above facts are entirely new. They have not been before the Board; they have not been passed upon; but they would appear to demand immediate recognition. The company's financial position, at any rate, is such that some immediate action is necessary.

"In ease of the situation, the company now agrees that if the necessary order for expropriation goes, should the Tye-Cauchon report be carried out and the railway and facilities be removed from the southerly part of Hamilton and facilities be supplied the company to the north sufficient to accommodate the public business of Hamilton and points served through Hamilton by the company and its connections, within five years from this date, the company will reconvey to the city the land now sought to be taken from the city at the price which the company has to pay for it."

The present proposal will practically double the freight facilities of the Kinnear yard. From a railway standpoint, no exception can be taken to them. On the other hand, from a civic standpoint, they are subject to all the objections which can be urged against the present location, and they have the effect of directly aggravating those conditions.

I am of the opinion that whenever it is reasonable and practicable union stations and union facilities ought to be adopted, and railway operations confined to as few

areas in urban districts as it is possible to confine them, having regard to the overlying public necessity and the interests of transportation. At the present moment it is impossible to do anything in this direction beyond the parties seriously taking up the whole issue and endeavouring to arrive at a proper and fair conclusion as a matter of arrangement, and it is to be regretted that this task has not yet been started.

As far as the Board is concerned it has absolutely no jurisdiction, as already pointed out in a former judgment, and it would be obviously improper for the Board, in such a case, to deny the right of extension to a company in order to bring about a result which the Board could not order and which might prove, when properly gone into, to be unduly onerous not only to the company but also to Hamilton's commerce.

The following comparative statements of tonnage handled over the line Welland and Hamilton for 1917 and 1918 will suffice to show the necessity for such extension of facilities to handle a greatly increased traffic, viz.:—

Tonnage Handled over Line Welland and Hamilton.

	1917.	1918.
January..	547,552	539,076
February..	549,458	666,706
March..	800,742	849,011
April..	741,029	758,323
May..	590,901	771,225
June..	545,641	705,894
July..	571,184	620,267
August..	561,151	571,368
September..	473,133	506,924
October..	478,794	537,134
November..	472,108	
December..	415,205	
Total, year 1917.. . . .	6,776,888	Total, ten months.. . . . 6,525,928
Total, ten months.. . . .	5,889,575	5,889,575
		636,353

Under all the circumstances, however, I am still of the opinion that the situation in Hamilton is such that everything the Board can do towards maintaining the parties in their respective positions, which at the same time will allow the public traffic to continue unimpeded, ought to be done. Under all the circumstances, and in view of the complications which arise in connection with the expropriation of the Pressed Brick Company's property, I am of the opinion that orders for expropriation ought to be made both for the city lot and for the brick company's property.

The provisions of the Act have been complied with and the company is entitled to the orders. While this is the case, as a condition to the granting of the orders, and a condition which the company must accept before obtaining any benefit under them, the value of the company's property in any negotiations that may take place should be considered as applying to the properties now operated, subject merely to the addition of the amounts the company pays in acquiring the city and brick yard properties as fixed by arbitration under the Act or by agreement. The result will be that if these conditions are accepted and the work goes on, in the event of the city either by arrangement or otherwise being in a position to supply the company with facilities to the north which will enable it as effectively and properly to carry on its business as it will be carried on under the new improvements that the company will not be in a position to ask for any consideration or remuneration for the grading and track work which it will be necessary for it to do in connection with the present extension.

While this sum will amount to about seventy-five thousand dollars, I am, nevertheless, of the opinion that in view of the circumstances, the provision I suggest is not unfair or unduly onerous. The company will certainly have for some years a far better business facility than it now has and can handle its business very much better than at the present time. While the commerce of Hamilton is perhaps just as much advantaged by this fact as the company itself, in my view the condition ought

to be insisted upon and the present status of the parties maintained to the fullest extent possible.

An order will now go granting the application of the Toronto, Hamilton and Buffalo Railway Company for the expropriation of the lands mentioned—and shown on plans filed—in usual form, but upon and subject to the foregoing conditions.

An order will also go granting the railway company's application for the expropriation of the Pressed Brick Company's property (File No. 28230.6), upon and subject to the same terms and conditions.

November 4, 1918.

Commissioners Goodeve and Boyce concurred.

Application of the city of Toronto for an Order giving Messrs. Clarkson, Gordon & Dilworth, chartered accountants, access to the books of the Bell Telephone Company, in order that they may ascertain whether the requested increase in the telephone tolls of the Bell Telephone Company is warranted.

Case No. 955.

JUDGMENT.

The CHIEF COMMISSIONER:

Application has been made by the municipal corporations of the cities of Montreal, Toronto, and Hamilton, and by the Union of Canadian Municipalities for an order directing the delivery of particulars by the Bell Telephone Company.

As intimated at the hearing, the request is reasonable and one in which an order for particulars ought to be made. The case is peculiarly one for particulars, as the justification for the application reads:—

“8. The foregoing increases and changes in and additions to existing telephone tolls are necessary in order to permit of the applicant meeting the greatly increased cost of furnishing telephone service to the public due principally to increased cost of labour and materials and other elements of cost affecting public utility companies.”

The case is one which permits, to a large extent, a definition of the situation in exact figures. It is obvious that the case can be very much better considered if the municipalities have information, before the hearing takes place, of what the company, in making its own case, would put in evidence at the hearing.

The parties do not agree at all as to the scope of the particulars which should be ordered, and judgment on the application which was argued at the Board's sittings in Ottawa on November 5 was reserved.

In considering the necessity for particulars it is obvious that over and above the actual increases in wages and material costs, consideration must be given to the effect of such increased costs on the company's revenues, involving as it also does a consideration of the increased revenues which the company may now receive, the effect of which may greatly reduce the result of increased costs on the company's net operating revenue. In other words, the question is not to be determined merely on the issue that costs have been largely raised and that, therefore, a commensurate increase in tolls must be granted, but also the effect of these increased costs on the company's earning power.

I am of the opinion that an order should go for particulars requiring:—

1. A return for the years 1913 to 1917, inclusive, showing for each year—

- (a) Gross operating revenue.
- (b) Operating expense.
- (c) Annual maintenance.
- (d) Depreciation.
- (e) Taxes.
- (f) Any other deductions made.
- (g) Net operating revenue.

2. A similar return of the company's operations for the year 1918 down to the latest date the company's books permit such a return to be made.

3. The amount of the company's capital charges, including stocks, bonds, and floating debt.

4. The value of the company's lands and plant used in the telephone service.

5. A statement showing the estimated increase in revenue that would be enjoyed by the company under the tariffs now submitted, the statement to show in detail the increases expected under the different rate changes brought about by the new tariff.

6. A statement showing the increase in labour costs expressed both in percentages and volume.

7. A statement of the increases in cost of materials, showing the different materials used by the company subdivided, on the one hand, into construction work and, on the other, into maintenance and repair work. The old as well as the new price, in each instance, to be given, and the amount of such materials which it is estimated are required annually for construction and for maintenance and repair to be shown.

8. Particulars of all increases in overhead charges, including capital charges and taxes, and particulars of any other increased costs incident to carrying on business and on which the company desires to rely.

November 6, 1918.

The Deputy Chief Commissioner and Commissioners Goodeve and Boyce concurred.

Application of W. A. Jenkins Mfg. Co., of London, Ont. Rates on Calf Meal.

File 19367.57.

REPORT OF CHIEF TRAFFIC OFFICER.

Applicants manufacture at London a line of animal and poultry foods and medicinal specifics branded "Royal Purple," including what is described as calf meal, to which latter the application pertains.

The following are the relevant items of the Canadian Freight Classification:—

Page 83, item 22. Cattle food, comprising chopped straw, hay, ensilage, faramel, meal and other similar cattle feed—l.c.l., 4th; c.l., 8th class.

Page 83, item 24. Concentrated or patent cattle food—l.c.l., 3rd; c.l., 5th class.

Page 90, item 56. Meal as an item in the grain products list—l.c.l., 4th; c.l., 8th class.

Able by tariffs as they now are, to ship in mixed carloads from London, applicants' main object is to enable their wholesale customers, in their redistributing operations, to include the calf meal in their mixed cars of grain and grain products by having the calf meal regarded as a straight grain product, instead of paying the l.c.l. rate on the enclosure of calf meal.

Prior to 1914 the carriers charged calf meal the 3rd-class rates provided for the concentrated or patent cattle foods, which on the faith of applicants' catalogue they claimed it was; but they then agreed to apply the 4th-class rates as for meal not otherwise specified, in other words, as a recognized grain product so far as the classification is concerned.

The meal is shipped in bags, and the constituents are given in the original application as wheat, corn, oats, shorts and oil cake, which are in the grain products list of the tariffs, and flaxseed.

It is admitted that the mixture also contains the "siftings" from the corn-flake factory at London, being the screenings larger and smaller than the standard flake as packed by that factory. This article has been partially cooked (toasted), and is

not included in the railway grain products special list, although uncooked cereals are. At the hearing it developed that the mixture also contained salt, and that the proportion of the flax seed amounted to 20 per cent.

The eastern rates on flaxseed are considerably higher than on grain and grain products; they are also higher on eastbound shipments to Fort William, although locally on the prairies no difference exists.

Mr. Ransom for the railways said at the hearing that on the authority of applicants 20 to 25 per cent of the grains that contain acid are cooked and dried, reducing the weight by the same percentage. He took the ground that the process of manufacture was entirely different from that of ordinary mill products and uncooked cereals to which alone the special grain products rates apply.

The following quotations are taken from the applicants' catalogue filed:—

Page 78—"Our calf meal is entirely different from most lines on the market, as it is partially predigested. The part of the product that is hard for the calves to digest is roasted first. This calf meal is concentrated, inasmuch as all the grains that are roasted shrink more than one-third in weight.

Index—"Royal Purple calf meal—a substitute for new milk and partially digested."

The catalogue quotes the following prices direct to the consumer: 100 pounds, \$4.25; 500 pounds, \$20; 1 ton, \$70. At the hearing Mr. Jenkins gave the wholesale prices as, pre war, about \$54; present, about \$84 per ton. I recently obtained the following quotations in Ottawa for this brand; cost, from \$4.35 to \$4.65, retail, \$5 to \$5.50 per 100 pounds; comparing, retail, with \$2 for bran, \$2.25 for shorts, \$3.25 for oil meal, and \$9 for flax seed.

Applicants contend that in the United States calf meal is carried on the same basis as any other stock food. By reference to the exceptions to the official classification filed by E. Morris of the Central Freight Association (C.R.C. No. 611) I find that item 535 authorizes the application of the grain products rates on calf meal, consisting of a mixture of oil meal, cotton seed meal, red-dog flour, and ground cull beans and peas, including a small amount of fenugreek seed, anise seed and salt. This arrangement applies from Central Freight Association territory to points east, including Eastern Canada. Fenugreek and anise are medicinal and condimental. Red-dog is the lowest grade of flour. This may or may not be a lower grade mixture than the London product—it seems to me to be lower.

The difficulty arises that the Board is asked to consider the product of this particular firm, while there are competing manufacturers with whose ingredients we are not acquainted, nor to what extent these may conceivably touch upon the higher priced and higher classified concentrated or so-called condition goods. Further, although applicants consider their proportion of flaxseed immaterial, the facts regarding the comparative rates remain. If flaxseed were carried in small quantities on the grain basis the carload sequence could not well be logically denied where the rates now differ.

The so-called "mixed livestock feed" rates which applicants believe they should have are specifically limited by the tariffs to—

"A mixture of the by-products from grain mills and elevators, glucose factories, distilleries, breweries, and sugar beet factories, with or without sweetening or salt."

It will be noted that these are waste products which applicants' materials are not.

I do not consider that a case has been made out for including this article in mixed carloads with grain and grain products at the same rates as the latter. On the other hand, it is my view that as an enclosure in such full carloads the l.c.l. 4th-class rates on the calf meal are excessive. I have to recommend, therefore, that for the redistributing movements from the jobbing centres the carload rates be ordered to apply on the one as on the other; in other words, 8th-class rates on the calf meal; the aggregate minimum weight to be that of the grain products tariff.

The initial shipments from London itself, whether in straight or mixed carloads, have already been covered by the railways by a commodity tariff to 25 destinations in Eastern Canada. Applicants object that these destinations are not sufficient; that should they sell a car for a destination not in the list it takes too long to have the tariff supplemented, and until this is done the new rate cannot lawfully be charged. The companies, however, frequently avail themselves of the provisions of clause (a) of the Board's Order No. 350 dated February 9, 1905, permitting the filing of emergency special rate notices to enable prompt shipment of any freight which may unexpectedly offer and for which no suitable tariff has been published, on condition that the publication and filing of such tariff is not unduly delayed, and I see no reason why this Order should not here prevail. For example; applicants mention a carload they had for Sackville, N.B., a point not then included in the commodity tariff, and which they could not ship for some time owing to the delay in promulgating the necessary supplement; a delay that the company might have obviated by taking advantage of the above mentioned Order. Applicants, on their part, should not wait until the car is actually required, but should make their request to the company for the supplemental schedule immediately they receive the consignee's orders for the goods.

Respectfully submitted,

J. HARDWELL,

Chief Traffic Officer.

OTTAWA, November 6, 1918.

ORDER No. 27863.

In the matter of the application of the W. A. Jenkins Manufacturing Company, Limited, of London, Ont., for the application of the special mileage grain products tariff rates on their shipments of "calf meal."

File No. 19367.57.

FRIDAY, the 15th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Toronto, June 24, 1918, the applicant company, the Canadian Freight Association, and the Canadian Pacific Railway Company being represented at the hearing, and what was alleged; and upon reading the further submissions filed and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That in the case of mixed carloads consisting of grain or grain products, as defined in the special tariffs appertaining thereto, and calf meal, from one shipper to one consignee, and shipped from jobbing or redistributing centres other than the point or points of manufacture of the calf meal whence specific commodity rates have been, or may be, published, the 8th-class rates shall apply on the calf meal; the aggregate minimum weight of such mixed carloads to be that of the said special tariffs on grain and grain products.

And it is further ordered: That the said application, except as above provided, be, and it is hereby, dismissed.

H. L. DRAYTON,

Chief Commissioner.

Application of the Bell Telephone Company of Canada, under sections 247 and 248 of the Railway Act and amendments thereto, for an order allowing it to exercise its powers of constructing, maintaining and operating its lines of telephones installed in and by underground conduit in the city of London, Ont., on Talbot street, commencing at the company's manhole located at the intersection of Talbot and Dundas streets and running south approximately 150 feet to the first laneway off Talbot street running east.

File 28948.

Mr. COMMISSIONER McLEAN:

JUDGMENT.

Application is made by the Bell Telephone Company of Canada to the Board for an order, under sections 247 and 248 of the Dominion Railway Act and amendments thereto, allowing said company to exercise its powers of constructing, maintaining and operating its lines of telephone installed in and by underground conduit in the following location in the city of London, province of Ontario, viz.: On Talbot street, commencing at the company's manhole located at the intersection of Talbot and Dundas streets, in the city of London, and running south approximately 150 feet to the first laneway off Talbot street running east.

As bearing on the merits of the application, the Bell Telephone Company states that at present its subscribers in the vicinity of the proposed work are furnished service by aerial construction on Market Square, and that the application to the city of London was for the purpose of placing an underground branch in the lane, prior to permanent paving being done; and that the installation of the branch line in question will do away with the at present existing aerial construction.

Application in this matter was made to the city by the Bell Telephone Company for permission to install the work in question, said application being made by the Telephone Company under date of August 8, 1918. The city, under date of August 20, notified the Bell Telephone Company that it was willing to grant the request, subject to the supervision of the city engineer and the utilities commission and without prejudice to any special claim, and subject to the terms of the resolution referred to as being on pages 156 and 166 of the council minutes. Said resolution refers to a charge by way of compensation for the use of the said streets.

The Bell Telephone Company's application to the Board, already referred to, is launched because the company is unwilling to take the permission of the city on the terms as to compensation attached to it. The answer of the city to the application of the Bell Telephone Company as made to the Board reads as follows:—

"In the matter of the application, file No. 28948, of the Bell Telephone Company of Canada for an order allowing it to exercise its powers of constructing, maintaining and operating its lines of telephone installed in and by underground conduits in the city of London, Ont.

"The city of London, in answer to the said application, states:—

"(1) That the council of the corporation of the city of London, on the 15th day of April, 1918, adopted the following motion, viz.:—

"That the corporation of the city of London proposes to charge and will charge the said company with an annual rental or sum for the use and occupation by the said company of the portions of the highways in the said city of London upon which the poles of the said company are, or shall be erected, and in which the wires or conduits of the said company are, or shall be, carried in the said city of London during the year A.D. 1918; that the said charge for the said poles shall be computed on the basis of twenty-five cents per month for each portion of a public highway in the said city of London upon which a pole of the said company is, or shall be, erected during the

said year; that the said charge for the said wires or conduits of the said company in the said highways in which the wires of the said company are, or shall be, carried during the said year be twenty-five cents per month for each one hundred lineal feet of conduit containing or capable of containing fifty wires or less; and that in the event of the charges for the portion of the highway occupied by the said poles and by the said wires or conduits not amounting in the said year to the sum of five thousand dollars, the charge shall be the sum of five thousand dollars; and that the said charges shall be payable half-yearly in advance from the first day of January, A.D. 1918, the first payment to be computed from the first day of January, A.D. 1918, and to be payable immediately after the giving of the said notice, and the next payment to be due and payable on the first day of July, 1918.

"That in the event of the Bell Telephone Company of Canada not promptly paying the rental or charges fixed by resolution of the council of the corporation of the city of London this day, the clerk of the corporation of the city of London be, and he is hereby, instructed to notify the said company that legal proceedings will be taken to collect the same.

"(2) That on August 20, 1918, the corporation of the city of London granted the request of the Bell Telephone Company for permission to open up Talbot street, south from their manhole at Dundas street to the first laneway running east, subject to the terms of the resolution passed on the 15th day of April above recited.

"(3) It appears to us that the only issue is the constitutional right of the corporation of the city of London to equitable consideration for value given to the company in the matter of real estate used for revenue purposes.

"(4) That the corporation of the city of London submits that the Bell Telephone Company is not an eleemosynary institution; and its use of the conduits in question will be for commercial purposes, securing revenue to the company from citizens of London, through its operation.

"(5) The corporation of the city of London further submits that the lane and highway, in which it is proposed to place the conduits, is wholly within the jurisdiction of this corporation.

"(6) The corporation of the city of London claims a constitutional and inalienable right to demand, and to receive, an equitable consideration for the value of real estate, which is the property of this municipality, required for commercial purposes, such as conduits and poles, by the Bell Telephone Company.

"(7) That the corporation of the city of London submits that the resolution recited in clause 1 hereof is a reasonable and fair resolution for consideration, and further begs to submit that its enforcement is, in no sense, beyond the constitutional and inalienable rights of this municipality, nor is it a violation of any legitimate rights of the Bell Telephone Company.

"(8) Attached hereto is a copy of a resolution adopted by the Ontario Municipal Association in Toronto on August 30, 1918.

"The corporation of the city of London respectfully submits that the company has no ground for making such application as is embodied in its communication to your Board on October 8, and is not entitled to any relief such as it requests your Board to order on its behalf."

It appears that there is no question as to the merits of the work. The only material point outstanding is as to the right of compensation. The method of supervision of the construction of the work is subject to an apparently minor exception on the part of the Bell Telephone Company.

In the correspondence between the city and the Bell Telephone Company, antedating the application of the latter party to the Board, the city provided that the work

should be "subject to the supervision of the city engineer and the utilities commission and without prejudice to any special claim." This is not recited in the answer as filed with the Board and above set out. The telephone company, in its application to the Board, in dealing with the question of supervision uses the following language:—

"In so far as the other conditions are concerned, we are required in any event to do our work under the supervision of the city engineer, or other duly appointed official, and we cannot do other than to perform this work, without prejudice to any claim which the city may have. We do not understand what constitutes the supervision of the utilities commission, but we do consider ourselves subservient to no official or corporate body other than those specifically mentioned in the Statutes, to whose terms we are subject."

The city, in support of its opposition to the application as launched by the telephone company, files a by-law of the city of Three Rivers, which deals with a tax which is apparently imposed upon each and every pole of the Bell Telephone Company in that city. The conditions under which this tax is imposed are not developed, nor is it indicated how the fact that a tax is paid in this instance has any bearing on the powers of the Board under sections 247 and 248 of the Railway Act.

The resolution of the Ontario Municipal Association which the city of London files, and which is therefore regarded as material to its presentation of the case, takes the position, in substance, that existing legislation is defective in that it does not provide that there shall be compensation. The material portion of the resolution so far as this phase of the matter is concerned reads ".....this 1918 convention of the Ontario Municipal Association, reaffirms its resolution on record, adopted at its annual convention in 1917, in regard to this matter and again requests 'the Dominion Government to have such legislation enacted as will define the absolute right of the municipal councils to control their streets for local services and compel the Bell Telephone Company of Canada to pay every municipality whose streets they use such terms as may be agreed upon between them, or in the absence of such agreement such sum as the honourable the Board of Railway Commissioners for Canada shall fix and determine.'"

The Board in the application of the *City of Windsor v. Bell Telephone Company*, Board's file 28207, decided that the Board was without power to make compensation a term of the Order. The matter was also gone into in the case of the *Bell Telephone Company v. the City of Ottawa*, Board's file 20191.2. In this application was involved the question of certain rearrangements of the Bell Telephone Company's lines in the city of Ottawa by underground construction. The real objection to what was proposed was based on the ground that the telephone company was seeking to carry on its work without paying for the use of the city's highways. The city solicitor in putting forth his contention used the following language:—

"We are in the position that we are owners in freehold of this property which this company asks the right to use for their own purposes. This is not a question of conflict between provincial and Dominion jurisdiction or severance of powers or anything of that kind. There is no doubt about the complete rights which the province has to establish municipalities and confer powers upon them, and one of the powers which it has given them, broader than the powers which used to obtain, is complete ownership in the highways."

The city of London in its answer submits "that the company has no ground for making such application . . . and is not entitled to any relief such as it requests your Board to order on its behalf." It was pointed out in the *Ottawa City Case* that where the matter of construction, maintenance or operation of a line of telephone upon, along, across, or under a highway had been taken up with a municipality in the first instance and that its consent could not be obtained "otherwise than subject to conditions not acceptable to the company" an application might be made by the company to the Board. That is to say, the right of the company to make just such an application as is herein involved is specifically covered by the Railway Act.

The decision of the Board in the *Ottawa City Case* that no power was conferred upon the Board to make compensation a term of the order applies here.

Some portions of what has been set out while material to the history of the application are not material as bearing on the interpretation of the section. The question of whether the Railway Act should be so worded as to maintain the rights above referred to is one on which Parliament has the final authority to speak. The Board's function is to interpret and administer the Act as it finds it. This is a proposition so elementary that it is often forgotten.

The parties being agreed on the merits, the order may go. There is apparently no real difficulty as to the method of supervision suggested. If, however, any question does arise, the matter will, on notification to the Board, be dealt with by the Board's Electrical Engineer.

The Chief Commissioner and Commissioner Boyce concurred.

November 13, 1918.

Application of the British Columbia Electric Railway Company, per W. D. Power, for permission to increase the commutation fares for the carrying of passengers between points on the Vancouver and Fraser Valley Railway covered by tariff B.C. Electric No. 11, C.R.C. No. 5, to basis as outlined in B.C.E.R. No. 19, C.R.C. No. 7.

File 28439.

JUDGMENT.

MR. COMMISSIONER MCLEAN:

Tariffs have been filed by the British Columbia Electric Railway providing for increases in passenger commutation rates on its Burnaby Lake line which is comprised in the Vancouver, Fraser Valley & Southern Railway, said line being subject to the Board's jurisdiction.

It is contended by the railway that increases in costs justify the increases in rates asked for.

The matter has stood, since hearing, for further submissions from the parties, and also for the outcome of pending litigation in a matter affecting the Board's jurisdiction as to agreements.

The railway's application as launched reads as follows:—

"The British Columbia Electric Railway Company hereby applies for permission to increase the commutation fares for the carrying of passengers between points on the Vancouver and Fraser Valley Railway, covered by tariff British Columbia Electric Railway No. 11, C.R.C. No. 5, to the basis as outlined in tariff B.C.E.R. No. 19, C.R.C. No. 7, attached hereto.

"In support of this application the applicant company respectfully states:—

1. That in addition to the submissions of the company in its application for an increase in freight rates, recently granted by the Board under its Order No. 27159, it is further submitted.

2. That recent wage increase granted its employees as a result of a ten days' strike make these passenger rate increases absolutely necessary to meet increased expenditures.

3. Your applicant submits statements showing the percentage of wage increases granted its employees, also further statements with respect to its revenues and cost of materials.

4. It is further submitted that notwithstanding agreements with the city of Vancouver and the municipalities of Point Grey and South Vancouver providing for a five cent fare, these municipalities permitted the company to charge and collect a six-cent fare within the city of Vancouver and the municipalities

of Point Grey and South Vancouver, and to charge and collect a fare of seven cents between the city of Vancouver including a transfer to the said municipalities of South Vancouver and Point Grey.

5. It is further submitted that notwithstanding an agreement with the municipality of Burnaby, granting certain rates on the Vancouver, Fraser Valley & Southern Railway, contained in a letter dated April 17, 1913 (copy attached), which rates became effective on the passage of what is known as the Burnaby franchise, permitting the company to operate certain street car lines within the municipality of Burnaby, that the rates so granted are unreasonably low taking into consideration the changed conditions and the financial position of the company as submitted."

Further, in support of the application, exhibits are filed setting out details as to earnings and expenses:—

BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY, LIMITED.

STATEMENT of Gross Earnings, Operating Expenses and Net Earnings ended June 30, 1915, 1916, 1917 and 1918, Vancouver and Lulu Island Railway, Vancouver, Fraser Valley and Southern Railway, and entire British Columbia Electric Railway System.

<i>Vancouver and Lulu Island Railway—</i>	1915.	1916.	1917.	1918.
Earnings, freight.	\$ 63,152	\$ 65,446	\$ 110,600	\$ 126,279
“ passenger	137,201	89,292	86,164	100,201
Total	\$ 200,353	\$ 154,738	\$ 196,764	\$ 226,480
Operating expenses	205,405	174,409	186,313	206,621
Net earnings	\$ —5,052	\$ —19,671	\$ 10,451	\$ 19,859
<i>Vancouver, Fraser Valley and Southern—</i>				
Earnings, freight.	\$ 5,778	\$ 5,239	\$ 3,916	\$ 3,134
“ passenger	52,010	34,815	31,611	40,840
Total	\$ 57,788	\$ 40,054	\$ 35,527	\$ 43,974
Operating expenses	49,125	39,233	31,223	34,488
Net earnings	\$ 8,663	\$ 821	\$ 4,304	\$ 9,486
<i>Entire Railway System—</i>				
Earnings, freight.	\$ 320,273	\$ 345,713	\$ 466,076	\$ 521,836
“ passenger	2,616,482	2,092,160	2,223,443	2,662,714
Total	\$2,936,755	\$2,437,873	\$2,689,519	\$3,184,550
Operating expenses	2,429,852	2,202,787	2,330,072	2,599,602
Net earnings	\$ 436,903	\$ 235,086	\$ 359,447	\$ 584,948

Overhead expenses and depreciation *not included* in above.

BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY, LIMITED.

STATEMENT Gross Earnings and Expenses, Years ended June. 1915, 1916, 1917 and 1918, Vancouver and Lulu Island Railway, Vancouver, Fraser Valley and Southern Railway, and entire British Columbia Electric Railway System.

	Years ended June 30.			
<i>Vancouver and Lulu Island Railway—</i>	1915.	1916.	1917.	1918.
Earnings	\$ 200,353	\$ 154,738	\$ 196,764	\$ 226,480
Total expenses	278,568	253,120	257,903	279,634
Loss	78,215	98,382	61,139	53,154
<i>Vancouver, Fraser Valley and Southern—</i>				
Earnings	\$ 57,788	\$ 40,054	\$ 35,527	\$ 43,974
Total expenses	68,720	56,356	44,410	48,048
Loss	10,932	16,302	8,883	4,074
<i>Entire Railway System—</i>				
Earnings	\$2,936,755	\$2,437,873	\$2,689,519	\$3,184,550
Total expenses	3,337,110	3,061,437	3,177,488	3,478,304
Loss	400,355	623,564	487,969	293,754

No return on capital stock is included in these figures.

While the exhibits as filed deal with other portions of the system, it is only the Vancouver, Fraser Valley and Southern Railway portion of the system which is involved in the present application.

In response to a direction as to further information, the following was submitted by the company:—

“As directed by the Board, I wired Vancouver for information relative to increased wages paid by the company for the first two weeks of August, 1918, and corresponding period of 1917, and beg to submit copy of telegram received in reply:—

“Burnaby line wages of motormen and trainmen, August 1 to 15, 1918, passenger and freight, \$547.16; corresponding period 1917, \$394.44; increase \$152.72. Service the same in both periods, about 12 men affected, some of whom work only part time. On Burnaby line wages of trackmen, sub-station men, car barn man and others in addition to above, but staffs not kept separate and segregation of time on Burnaby line for August not available until monthly accounts complete towards the end of September, but all these have had increases, as high or higher than motormen and conductors.”

“The wages paid trainmen you will note shows an increase of \$152.72 for the two weeks period, or \$3,970.72 for the year.

“These figures, however, include freight and passenger trainmen. I think a fair allocation as between freight and passenger could be made on a train mileage basis.

“The average day's passenger train service between Vancouver and Westminster on the line in question is thirteen trains each way, while the freight service is one train each way. On the basis of 13 to 1, the wages would work out as follows:—

Freight.	\$ 305 44
Passenger.	3,665 28
	<hr/>
	\$3,970 72

“In submitting the above I would respectfully draw your attention to the fact that these figures include wages paid trainmen only. The statements already filed show similar or greater increases to employees in other branches of the service.

“These figures prove that our statement before the Board, to the effect that the increases applied for, would not meet the additional wage bill is here borne out by the facts.”

As already set out, the detail for the Vancouver, Fraser Valley & Southern Railway Company shows an operating ratio of 78.4 per cent. In the application of the British Columbia Electric Railway, on behalf of the Vancouver & Lulu Island Railway and the Vancouver, Fraser Valley & Southern Railway, to authorize freight increases, said increases being dealt with in the judgment of April 23, 1918, the loss on the Vancouver, Fraser Valley & Southern was shown at \$8,883 for the year ending June, 1917, as compared with the loss now shown up to June, 1918, of \$4,074. The difference between operating expenses and total expenses as shown for each year is due to the items of overhead expenses and renewals maintenance, and the method pursued was accepted in the judgment above referred to.

The figures of additional cost as computed in the special return above set out must be given consideration in addition to the losses as shown for the year ending June, 1918.

The following table sets out the increases proposed in commutation rates:—

COMMUTATION RATES.

Vancouver, Fraser Valley and Southern Railway Company.

Miles.		Between		and	
		Vancouver 10-ride, adult.		New Westminster 10-ride, adult.	
		Old rate.	New rate.	Miles.	Old rate. New rate.
4.9	Horne Payne...	\$0.50	\$0.70	9.8	\$1.25 \$1.50
5.5	Crown Avenue...	0.75	0.90	9.2	1.25 1.50
6.1	Ardley	1.00	1.00	8.6	1.25 1.35
6.9	Hastings Road...	1.00	1.00	7.8	1.00 1.20
7.7	Sprott...	1.00	1.20	7.0	.75 1.00
8.3	Burnaby Lake...	1.00	1.20	6.4	.75 1.00
8.8	Rayside...	1.50	1.35	5.9	.75 .90
9.2	Vorce...	1.50	1.50	5.5	.75 .90
9.5	Laursen...	1.75	1.50	5.2	.75 .90
9.8	Hill...	1.75	1.50	4.9	.75 .75
10.3	Cumberland Road...	1.75	1.75	4.4	.75 .75
10.7	Stormont Road...	1.75	1.75	4.0	.75 .75
11.1	Cariboo Road...	1.75	1.75	3.6	.50 .75
11.9	Golf Links...	1.75	1.75	....	.... —

Under the existing tariff there is a 50-ride commutation ticket. The rates vary from \$3 for 50 tickets between Vancouver and Crown avenue to \$7 between Vancouver and Golf Club. Between New Westminster and the stations from Stormont road to Hastings road, etc., all stations short of Hastings road are grouped on a 5-cent commutation rate, while to Hastings road it is 8 cents. In the proposed tariff the 50-ride ticket is eliminated.

The total passenger revenue for the Vancouver, Fraser Valley and Southern for the year ending June, 1918, was \$40,207.54, of which the revenue from commutation traffic represented approximately 30 per cent. The company computes that the increases as asked for will amount to an addition of approximately 14.4 per cent to the existing commutation revenue.

In the table of rates above set out there are 14 increases and 3 decreases, while 10 rates are unchanged. Averaging distances and rates on the tariffs in force, an average journey of 7.5 miles has an average rate of 10.6 cents as against 11.9 cents under the proposed tariff. The rates may be compared on a per-mile basis. Comparing the total mileage comprised in each of the one way commutation rates as against the total of the rates charged for this mileage total, the average rate per mile under the old schedule was 1.4 cents as against 1.6 cents under the proposed rates.

The car line in the city of Vancouver is not subject to the jurisdiction of the Board. The company's practice is to allow a transfer in connection with the commutation rates. As explained by Mr. Power for the company (evidence vol. 287, p. 3016) the practice is as follows:—

“..... and it must not be overlooked that these commutation tickets in every case carry a transfer in Vancouver city, where the rates are from Vancouver out, and in New Westminster where the rates are from New Westminster in to the municipality. Over the 8.3 miles from Vancouver we take a passenger for 8 cents and give him a ride in the city, to any point in Vancouver”

The one-way rates are not raised by the tariff filed. Detail as to the one-way rates as compared with the standard rates is given below:—

Standard.		Between		and	
		Vancouver.		New Westminster.	
		One-way rate.		One-way-rate.	
15	Horne Avenue	10		30	20
20	Crown Avenue	15		30	20
20	Ardley	15		25	20
20	Hastings Road	15		25	20
25	Sprott	15		20	15
25	Barnaby Lake	20		20	15
25	Rayside	20		20	15
30	Vorce	20		20	15
30	Laursen	20		20	15
30	Hill	20		15	10
35	Cumberland Road	25		15	10
35	Stormont Road	25		15	10
35	Cariboo Road	25		10	10
35	Golf Links	25		..	—

The one-way rate between New Westminster and Vancouver is 25 cents. Supplement 2 to C.R.C. No. 2, effective May 3, 1915, quotes a return rate of 35 cents, and makes the Vancouver-Westminster rates maxima to intermediate points.

The matter was gone into at length and counsel for the municipality of Burnaby presented with great force and earnestness much detail relating to the ramifications of the British Columbia Electric System, much of which, however, while informative dealt with matters outside the jurisdiction of the Board.

While incidental reference was made by counsel for the municipality to the financial operations of the British Columbia Electric, it cannot be said that any serious attack was made on the cost detail as presented by the company. In substance, his position was as set out at the hearing (evidence vol. 287, p. 3005):—

“As to the details of the expenditures of the company, that is no concern of ours. We say that we have a contract in writing under seal with this company, and that the fares they are going to charge under the new schedules are in direct contravention of this contract.”

On the merits, a case has been made out for the increase of rates as proposed. Consideration must be given to the legal contentions advanced by counsel for the municipality.

While the railway was built under Dominion charter and operates in the municipality on its own right-of-way, various agreements were entered into which are alleged to have a bearing on rates. Without attempting to set these out in detail, it may be said that there was an agreement in 1913 which it is contended by counsel for the municipality relates back to and continues the rates provided for by earlier agreements.

The rates in question are referred to as being operative in tariffs effective in 1911, and are referred to as also having received the sanction of the Board. This reference is in error, as the rates in question being special rates did not require the formal sanction of the Board, and came into force on compliance with the statutory requirements as to notice.

In the application as launched, the company admits an agreement as evidenced in its letter of April 17, 1913. The copy filed by the company reads as follows:—

“April 17, 1913.

“Councillor ALEX. MACPHERSON,

“Municipal Hall,

“Edmonds, B.C.,

“Dear Mr. Macpherson,—

“Referring to our interview of yesterday, I beg to say that in accordance with my promise I laid before the general manager the representations made by yourself and other gentlemen of the delegation, with respect to certain fare

charges for settlers on the Vancouver, Fraser Valley and Southern Railway.

"I have much pleasure in informing you that the general manager has authorized me to inform you that in the event of the tramway by-law, now before the ratepayers of Burnaby, being passed and coming into effect, the settlers' rate between Vancouver and Burnaby Lake shall be the same as that now in effect between Vancouver and Sprott station, namely:—

10 rides..	\$1.00
50 rides..	4.00

"Regarding the rate to Raeside, this cannot be reduced as it is already as low as the proposed reduced rate to Edmonds.

"I trust the members of the Burnaby Lake Progressive Association, who were with you at our interview of yesterday, will appreciate the fact that we have done everything possible to meet their wishes.

"Yours truly,

"F. R. GLOVER,

Executive Asst. General."

At the hearing, it was contended by counsel for the railway company that the agreement of 1913 in no way relates to the status of the Vancouver, Fraser Valley and Southern Railway; that this railway was constructed under a by-law of 1909; that the by-law of 1913 recites that the by-law of 1909 was null and void, and that the agreement of 1913 related "only to electric street railways or trainways herein constructed by the company upon streets within the district of Burnaby under the terms of this agreement" (section 33 of the by-law of 1913, as referred to in evidence, vol. 287, p. 3068.)

Putting the matter on the highest ground contended for by the municipality and assuming that through the ramifications of the agreements there stretches a continuing bond of obligation as to rates, it is none the less apparent that the merits being as they are the matter falls within the reasoning in *Application of the Montreal and Southern Counties Railway Company, etc.*, Board's file No. 28439-9, and *Application of the Hamilton Radial Electric Railway Company, etc.*, Board's file No. 28439-6. The agreements relied upon in the present application have not been validated by legislation.

Order permitting the increases as covered by tariff filed may become effective on ten days' notice.

November 14, 1918.

The Chief Commissioner and Mr. Commissioner Goodeve concurred.

ORDER No. 27868.

In the matter of the application of the British Columbia Electric Railway Company, hereinafter called the "applicant company," for permission to increase the commutation fares for the carriage of passengers between points on the Vancouver, Fraser Valley and Southern Railway.

File No. 28439.

TUESDAY, the 19th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, August 27, 1918, in the presence of counsel for the applicant company and the municipality of

Burnaby, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the applicant company be, and it is hereby, authorized to charge the increased commutation fares as published in its tariff C.R.C. No. 7 filed with the Board.

2. That the said tariff C.R.C No. 7 containing the increased fares may become effective on December 1, 1918.

H. L. DRAYTON,
Chief Commissioner.

Car Demurrage Rules—Influenza Epidemic.

File Nos. 1700.234, 1700.234.1-2-3-4-5-6-8-9-11-14.

JUDGMENT.

The CHIEF COMMISSIONER:

On October 25 a judgment was issued providing that demurrage should not be charged where shippers were unable to accept cars owing to the ravages worked by the epidemic among their employees. This judgment was followed up by a memorandum dated November 14, which was communicated to the different parties in interest by a letter from the Secretary of the Board. The letter is as follows:—

“I am directed by the Board to write that considerable misapprehension appears to exist as to the meaning of the direction given by the Board on the 25th October last dealing with charges for demurrage during the influenza epidemic.

“The effect of the Board’s memorandum is not to abolish car demurrage tolls, during the period of the epidemic. Relief, however, is extended to such consignees and consignors who were unable to load or unload cars concurrently owing to the illness of their employees. The general duty to unload promptly where such unloading can be accomplished still remains, but during the prevalence of the epidemic the railway companies may and must, where demurrage otherwise would be charged, relieve firms of demurrage payments to the extent that such firms have been unable to make prompt loading or unloading as a result of influenza among their employees.

“As a result it is the duty of the companies to consider each case on its merits, and apply the appropriate relief. As a further result, all, railway companies which excuse the payment of demurrage on the grounds of influenza existing among the employees of consignees or consignors are justified in such action having regard to all the prohibitions of discrimination.”

The Car Service Bureau and those applying for relief under the judgment of October 25 do not seem as yet to have arrived at any proper procedure in carrying out the Board’s directions, as a number of specific complaints have been received.

There ought to be no difficulty in giving effect to the Board’s directions. The situation is perfectly plain. In the first instance, consignors and consignees who make delay either in loading or unloading cars, are subject to the penalties provided under the existing rules; but consignors and consignees who have been unable to load or unload as the result of the influenza among their employees are to be excused from the operation of the rules. Prima facie, a defaulting consignee or consignor is liable and the onus of proof is on any consignee or consignor to show such a state of affairs existing as the result of the epidemic and under which, with due diligence, it was impossible for the delay to have been prevented.

Applicants for relief under the Board’s order, so that the question can properly be disposed of not only as between the railways and the merchants, but as between

merchants themselves, and so that all may be treated on a like basis and without discrimination, should file with the Car Service Bureau, or with the immediate railway company interested, evidence in writing, either by affidavit or declaration, giving the following particulars:—

1. The number of men employed immediately previous to the epidemic.
2. The number of men employed during the continuance of the epidemic and at the time the default in question took place.
3. Any special or auxiliary efforts made to release the cars during such period, such as taking men when possible from other branches of the firm's activities, or securing them from outside sources, such as the services of outside carters when available, or showing that no men were available in other branches of the applicant's business.
4. What action, if any, was taken to stop further shipments to the plant until the epidemic had ceased.
5. If no action was so taken to show whether, in the course of trade and having regard to the dates of shipments, any such action was possible.

Some of the complaints that have been received show that at least in part the applications are based upon the so-called bunching of cars. The rules already provide for this, and apart from any specific direction, merchants are entitled to relief when cars are bunched, or in other words, when cars are being forwarded at the one time in greater numbers than as ordered and unloading facilities permit.

On the receipt of this material the matter ought to be promptly dealt with by the Car Service Bureau or by the railway company interested, as the case may be, and under the circumstances the preliminary payment of the demurrage claim ought not to be insisted upon. It is of course open to the Bureau or to the railway company interested to challenge the statements made and to ask in doubtful cases for further proof; but I confidently expect that the Bureau and the railways will adjust, without the necessity of any Board hearings, the great majority of cases which will arise.

The Car Service Bureau submits that when it is found that delays are in fact chargeable to the inability of employees of consignors or consignees owing to the influenza to load or unload, the higher tariff now in force ought to be reduced to the lower tariff of \$1 a day. There is no room for the distinction that the Car Service Bureau desires to make. When delays are unavoidable owing to the ravages of the epidemic, it is not a question of the scale of charges; it is a question as to whether or not demurrage should or should not be charged, and the Board has ruled that it ought not to be charged. No charge, therefore, of any character is to be made for unavoidable defaults attributable to the foregoing reasons.

November 25, 1918.

Commissioners McLean and Boyce concurred.

ORDER No. 27827.

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "applicant company," for an Order amending the Order of the Board No. 27490, dated July 29, 1918, granting leave to the applicant company to remove its regular station agent at Mount Pleasant, in the township of Brantford, county of Brant, and province of Ontario, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean and heated for the accommodation of passengers and to care for less than carload freight and express matter.

File No. 4205.160.

MONDAY, the 4th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application and what is alleged in support thereof and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said Order No. 27490, dated July 29, 1918, be, and it is hereby, amended to relieve the applicant company from appointing a caretaker at Mount Pleasant station as required under said order, subject to and upon the conditions that the applicant company arrange (a) to keep the station clean, heated, and lighted when necessary, and (b) to take care of less than carload freight to and from said station in accordance with the requirements of the General Order of the Board No. 235, dated May 22, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27830.

In the matter of the application of the corporation of the township of Nepean and Westboro Police village for disallowance of a proposed increased tariff of the Ottawa Electric Railway Company, C.R.C. No. 5, published and filed to become effective November 18, 1918.

Case No. 2987.

WEDNESDAY, the 6th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been filed in support of the applications,—

It is ordered: That the said tariff of the Ottawa Electric Railway Company, C.R.C. No. 5, published and filed to become effective November 18, 1918, be, and it is hereby, suspended pending hearing of the applications at Ottawa, November 18, 1918.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27833.

In the matter of the application of the Express Traffic Association of Canada, on behalf of the express companies subject to the jurisdiction of the Board, for an Order,—

- (a) *Rescinding Clause 2 of the Order of the Board No. 25975, dated March 29, 1917, which requires the companies to collect and deliver freight within one-half mile outside of the free cartage area on the payment of additional tolls therein specified; or*
- (b) *Increasing the said additional tolls adequately to the cost of the service so rendered; or*
- (c) *Permitting to the companies the practice prevailing in the United States, namely, transfer of freight to independent carters for deliveries outside of the free area, subject to such carters' charges, unless held to be called for on written request from the consignee;*

And in the matter of the application of the corporation of the city of Toronto, the council of Ratepayers' Associations, and the Citizens' Express and Freight Campaign Committee of Toronto, for an Order requiring the express companies subject to the jurisdiction of the Board to collect and deliver freight throughout the city of Toronto;

And in the matter of the application on behalf of the city of Toronto for an Order appointing a chartered accountant, or accountants, to examine the books of the Dominion Express Company and the Canadian Express Company in respect of their operation in the Toronto toll zone so-called.

File No. 4214.150.

WEDNESDAY, the 6th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application, the express companies interposing no objection to an examination in so far as the receipts and expenditures for the toll zone in question are concerned,—

It is Ordered: That Messrs. Clarkson, Gordon, and Dilworth, chartered accountants, residing and practising in the city of Toronto, be, and they are hereby, authorized and empowered to examine the books, papers, and documents of the Dominion and Canadian Express companies for the purpose of ascertaining and verifying the receipts and expenditures of the said companies in connection with their service in the said Toronto toll zone; the companies to produce and make available to said accountants all books, papers, and documents necessary for the purposes of such examination; the expenses incurred in such examination to be borne and paid by the city of Toronto.

H. L. DRAYTON,

Chief Commissioner.

ORDER No. 27841.

In the matter of the application of the Montreal Board of Trade for disallowance and of the Canadian Manufacturers' Association for suspension of the proposed cancellation of commodity rates on ferro-silicon from Welland and Thorold, Ont., and Shawinigan Falls, Que.

File No. 28981.1.

THURSDAY, the 7th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what has been filed in support of the application,—

It is ordered: That the cancellation of the rates on ferro-silicon from Welland and Thorold, Ont., and Shawinigan Falls, Que., published in the following schedules to become effective November 15 and November 19, 1918, be, and they are hereby, suspended pending hearing on a date to be fixed by the Board:—

Canadian Pacific Railway Supplement 69 to C.R.C. No. E-3208.

Grand Trunk Railway Supplement 9 to C.R.C. No. E-3983.

Canadian Northern Railway Supplement 6 to C.R.C. No. E-1124.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27845.

In the matter of the order of the Board No. 25724, dated December 15, 1916, authorizing the Canadian Northern Saskatchewan Railway Company (Wroxton westerly branch) to construct a transfer track between its railway and the Canadian Pacific Railway, in the northwest quarter of section 36, and the northeast quarter of section 35, township 25, range 4, west of the second meridian, at Yorkton, Sask.;

And in the matter of the order of the Board No. 27559, dated August 14, 1918, apportioning the cost of the said transfer track;

And in the matter of the application of the Canadian Northern Saskatchewan Railway Company for an order suspending the order of the Board No. 27559, dated August 14, 1918, apportioning the cost of the said transfer track.

File No. 6713.127.

FRIDAY, the 8th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Canadian Pacific Railway Company, and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That said order of the board No. 27559, dated August 14, 1918, apportioning the cost of the said transfer track be, and it is hereby, suspended until such track has been constructed and in operation for a period of three months, at

which time the matter may be dealt with again upon the basis of the actual results of the operation.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27861.

In the matter of the application of the Toronto Board of Trade, the Canadian Explosives, Limited, Montreal, and the Canadian Manufacturers' Association for an order disallowing the increased tariffs of local switching charges of the Grand Trunk, the Canadian Pacific, and the Canadian Northern Railway Companies filed to become effective on the 18th day of November, 1918.

File No. 21700.2.

MONDAY, the 16th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

2. That the following tariffs showing the proposed increases in local switching charges to become effective November 18, 1918, be, and they are hereby suspended pending hearing and order of the Board:—

Canadian Northern Railway Tariff, C.R.C. E. 1151.
Canadian Pacific Railway Tariff, C.R.C. E. 3588.
Grand Trunk Railway Tariff, C.R.C. E. 4055.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27875.

In the matter of the application of the Board of Trade and residents of Rosebud, Alta., for an Order directing the Canadian Northern Railway Company to erect a suitable freight and passenger station and construct a passing track at Rosebud, Alta.

File No. 28903.

MONDAY, the 18th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
A. S. GOODEVE, *Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the railway company, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to erect a third-class station building at Rosebud, in the province of

Alberta, in accordance with its third-class station plan on file with the Board, and to install a passing track at the said point; the work to be completed by the first day of September, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27864.

In the matter of the application of the Quebec, Montreal and Southern Railway Company, hereinafter called the "applicant company," for an order amending the order of the Board No. 27741, dated October 1, 1918, requiring the applicant company, "inter alia," to arrange its time table so as to extend its mixed train due to arrive at Noyan Junction at 7.30 p.m., daily, except Sunday, through to Lacolle Junction, showing it to arrive at 8 p.m.; and its mixed train due to leave Noyan Junction at 5.50 a.m., to leave Lacolle Junction at 6.35 a.m., and Noyan Junction at 7 a.m., arriving at Iberville at 8.20 a.m.

File No. 18727.2.

TUESDAY, the 19th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
A S. GODDEVE, *Commissioner.*

Upon reading what is filed in support of the application and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said order of the Board No. 27741, dated October 1, 1918, be, and it is hereby, amended by striking out the figures "6.35," "7," and "8.20" in the seventh and eighth lines of the operative part of the order and substituting therefor the figures "8.00," "8.30" and "10.00."

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 173.

File No. 1750.17. Employment by railway companies of trackmen under physical disability as regards hearing and eyesight.

November 15, 1918.

The Board has given careful consideration to the matter of employment by railway companies of trackmen suffering disability from defective hearing and eyesight, and to accidents resulting therefrom, and while realizing the desirability, owing to the present shortage of unskilled labour, of hampering the railway companies as little as possible in their selection of this class of labour, it is of the opinion that where a trackman is employed the foreman engaging him might reasonably satisfy himself that the candidate for employment suffers no such serious physical disability with respect to hearing and eyesight as will render him specially liable to accident or increase the hazard of the employment for which he is engaged; and the co-operation, as far as possible, of the railways is therefore asked in furtherance of this protection.

By Order of the Board,

A. D. CARTWRIGHT,
Secretary.

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 19

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Application for an Order fixing a flat rate instead of a rate by weight upon shipment of wood from Algonquin Park to municipalities purchasing wood for the purpose of distribution amongst their citizens at cost, in order to overcome the threatened fuel famine of the coming winter.

JUDGMENT

File No. 27685.5.

Mr. COMMISSIONER McLEAN:

As the result of the urgent advice of the Fuel Controller various municipalities have undertaken to obtain supplies of cordwood to be used as an auxiliary stock of fuel for people resident within the limits of the respective municipalities during the coming winter. The arrangement made, in so far as it has been brought to the attention of the Board, is one whereby all that is desired by the municipality is to be recouped its out-of-pocket costs. It goes without saying that the utilization of such auxiliary stocks of fuel is in every way commendable as helping to provide against the recurrence of the unfortunate fuel conditions to which many municipalities were subjected last winter.

The matter is brought before the Board's attention in connection with the supplies of cordwood which various municipalities are receiving from Algonquin Park. The provincial Government has been taking out a large amount of hardwood to be made use of in the public institutions of the province as a substitute for anthracite coal. The provincial Government has also induced various municipalities to take advantage of the supply of hardwood from the same source. The Government is making no charge for the wood, the sole condition being that it shall be disposed of to the consumer at cost.

Representations as to the rates charged have been made by Waterloo, Kitchener, Barrie and Guelph. In general, the representation made is that the municipality is being subjected to disadvantage owing to the fact that the rate per 100 pounds is being charged. It is pointed out that the weight necessarily varies according as to whether the wood is wet or dry. The costs represented by the weight on the cord basis will, therefore, necessarily vary to the municipalities; and it is stated that since it is the desire of the municipality to sell at a uniform rate, it must know the cost of freight and not be subjected to varying freight costs per cord. The municipalities, therefore, ask for a flat rate instead of a rate by weight. The request of the municipalities is supported by the provincial Government.

The request, it will be noted, is launched by the municipalities. The significance of this in its bearing on the powers of the Board will be considered later. Reference

may now be made, however, to the powers of the Board in regard to an application made by an individual shipper for a flat rate basis.

In *Roberts v. Can. Pac. Ry. Co.*, 18 C.R.C. 350, the Board had before it an application of an individual shipper. It was pointed out in this application that there was a very considerable difference in weight between a cord of unseasoned rough wood and a cord of seasoned rossed wood. The application as made, while making reference to firewood, in reality turned on pulpwood rates.

What was asked for was a flat rate per cord. The weight of the seasoned pulpwood was given as being 3,200 pounds per cord, and it was desired that in the case of unseasoned wood, whenever the weight of the same exceeded 3,200 pounds per cord, the freight of this was to be reckoned by the carload rate instead of by weight; and it was stated "that the price per carload should be equal in amount to the value in freight of the same car loaded with seasoned wood on the basis of 3,200 pounds to the cord, reckoned at the existing rate of freight per 100 pounds from the loading point to points of delivery. It was represented that the adoption of such a practice would increase the territory from which wood could profitably be shipped, thus placing the producer and the consumer in more direct communication.

The Board found that the pulpwood rate had not been attacked as unreasonable and upheld the principle of charging on the unit of weight, viz. 100 pounds. It was pointed out on the submission as made by the applicant that the disadvantage as to the shipment of unseasoned wood was a disadvantage which arose from the fact that the shippers had not sufficient capital to ross wood and hold it until it was more seasoned. This was recognized by the Board as being a situation for which the railway is not responsible.

The decision in question pointed out the findings of the Board as set out in various decisions, which findings were considered applicable to the case in question. These are set out in the decision. It was indicated that the initial making of rates was in the hands of the transportation agency and that it was not one of the Board's functions, as delegated by Parliament, to make rates to develop business, but that it dealt with the reasonableness of the rates either on complaint or of its own motion; and in dealing with the difference between the weight of the green wood and of the seasoned wood reference was made to decisions of the Board dealing with the difference in weight between containers and their contents, and pointing out that where there was a heavy container this was a trade disadvantage which had to be borne by the shipper concerned.

While the Board has held that in the matter of rates as affecting ordinary shippers the contentions advanced by the applicant cannot prevail, there is the further question—does the fact that shipments are made by a municipality make any difference?

The Board has pointed out in various decisions that its jurisdiction in connection with rate applications is concerned with the reasonableness of rates, not with the rate of profit which applicant is making, and that the Board is not concerned with equalizing costs of production. Reference may be made in this connection to *Hudson Bay Mining Co. v. Great Northern Ry. Co.*, 16 C.R.C., 254, at page 259.

What is involved in the present application is not the question of a profit to the municipality. It is desired that the rates shall be so adjusted that it shall be able to quote a uniform price throughout the season, and not have the price varying with the rate on the type of wood supplied. Under the regulations of the fuel controller, provision is made for variation in price of coal to the consumer according as costs to the dealer vary. What is desired in the present application is, apparently, as a matter of business convenience, to have standardized costs.

The matter is emphasized as being one concerned with the "public interest," and as set out at the outset it may be frankly recognized that anything which eases the strain in the fuel situation is in the public interest; but when this has been said it does not necessarily follow that the Board has any jurisdiction to deal with a rate or a rate

regulation on an allegation of "public interest," unless power to act on this basis is given to the Board.

The Board's powers are delegated to it by Parliament and are of necessity those as defined in the explicit statements in the various sections, or following by necessary implication therefrom.

The words "public interest," are to be found only in one of the rate sections of the Act. Section 342 reads as follows:—

"Notwithstanding anything in this Act, the Board may make regulations permitting the company to issue special rate notices prescribing tolls, lower than the tolls in force upon the railway, to be charged for specific shipments between points upon the railway, not being competitive points, if it considers that the charging of the special tolls mentioned in any such notices will help to create trade, or develop the business of the company, or be in the public interest and not otherwise contrary to the provisions of this Act.

"2. Every such special rate notice, or a duplicate copy thereof, shall be filed with the Board, and shall exist merely for the purpose of giving effect to the special rate charged for the specific shipment mentioned therein."

Without raising the question as to whether the words in the section "in the public interest" are, because of their correlation to the words "to create trade or develop the business of the company," to be read, as a matter of construction, under *ejusdem generis* rule as indicating that the public interest was measured by creating trade, etc., etc., it is to be noted that the section is a permissive one, and that it is concerned with a jurisdiction which arises when there is an application by a company.

Section 342 contains, with slight variations of phraseology, the same subject matter as is set out in subsection 4 of section 275 of the Railway Act, 1903.

The Board in *re Canadian Freight Association and Industrial Corporations*, 3 *Can. Ry. Cas.*, 427, used the following language at page 429:—

"This Board is prepared to give due effect to subsection 4 of section 275 to what it believes to be the extent intended by Parliament, but in the opinion of the Board, such concession must be the subject of a separate and distinct application in each case, and must be dealt with on the individual merits of each and with full knowledge of the facts and circumstances in every instance, and upon such information as will enable the Board to judge of the effect of its Order upon other industries and upon the shippers and dealers in commodities, whether of a like or of a different kind."

The Board in the same decision expressed the opinion that in enacting the clause the intention was to modify the rigid interpretation which the Board would otherwise be compelled to place upon the clause relating to discrimination. The construction of the section was also involved in *The Manufacturers Coal Rate Case*, 3 *Can. Ry. Cas.*, 438, in which it was recognized that the jurisdiction of the Board under the section was concerned with the mitigation in a special case of the rigid application of the discrimination section, the function of the Board being to see, in a case being made by a railway, that the discrimination did not take place.

Section 341 is the special section which deals with the powers of the railway of its own volition to make certain concessions. In so far as a municipality is concerned, subsection (a) is material. The Act provides that "Nothing in this Act shall be construed to prevent," and then subsection (a) reads:—

"(a) the carriage, storage or handling of traffic, free or at reduced rates, for the Dominion, or for any provincial or municipal government, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the carriage, free or at reduced rates, of destitute or homeless persons, transported by charitable societies, and the necessary agencies employed in such transportation;"

This, again, is a permissive section. The railway may grant such a concession or rearrangement as is asked for in the application. The applications herein referred to all appear to be directed against the Grand Trunk Railway Company. The applications have been taken up with the railway company and it answers, in substance, that while section 341 might apply if the wood were being obtained for the municipality itself, it does not apply when it is being obtained by the municipality for the use of its citizens; and it further points out that it is also doing business by carrying wood to various municipalities for private dealers, and that if it extended a flat rate basis to a municipality while the dealer was charged on the basis of weight it would be open to a charge of discrimination.

The general powers of the Board under this section arise only where there is discrimination. Reference may be made to *Massiah v. Canadian Pacific Ry. Co.*, 17 C.R.C., 88, and cases therein referred to.

The section provides "..... the carriage of traffic by the company may be extended..... by the Board;" that is to say, if there was such carriage as is herein asked for for a municipality and a refusal of similar treatment, under substantially similar circumstances and conditions, to another municipality, the Board is authorized to so extend the carriage of traffic as to cover the case of a municipality which is discriminated against. When a practice is asked for which does not exist and no question of discrimination is alleged, the Board is not empowered by the section to so extend the carriage of traffic as to include the practice in question. So far as the railway is concerned, the section is permissive; so far as the Board is concerned, the powers conferred on it under the section are simply amendatory.

For the reasons stated, the Board has no power to grant the relief asked for.

November 30, 1918.

The Chief Commissioner concurred.

Mr. COMMISSIONER BOYCE:

I have read the carefully considered opinion of Mr. Commissioner McLean, delivered November 30 last, and concurred in by the Chief Commissioner, and, after the most careful and anxious study of the very important questions involved I am compelled to concur in the conclusions arrived at. I do so with much reluctance and should have been glad if some avenue could have been found by which this Board could have granted some relief. Circumvented, as it is, by statutory limitations, I agree that any order the Board might make to that end would, notwithstanding the imperative demand for the relief asked, be without the support of statutory authority.

The relief sought is extraordinary. Equally so are the conditions which necessitate the applications. Neither were contemplated when the Railway Act was framed, consequently no discretion is left with this Board to make any order which would meet the circumstances.

Bearing in mind that what is asked does not necessarily involve a reduction of existing rates for the carriage of cordwood, or wood for fuel purposes, but merely a change or adjustment of these rates as regards certain sections, to assist the provincial Governments, and the petitioning municipalities to deliver wood for fuel to a necessitous public at cost, but without involving the risk of loss incident to the carriage under the present rates, it seems to me not to be impossible that the railways concerned, with, perhaps, the assistance and sanction of the Railway War Board, could, in the special and urgent circumstances, provide, by special tariff, for the relief asked, limited in its application to the conditions sought to be met in specific traffic zones, by the provincial Government and the municipalities, or, perhaps, the Privy Council, under the War Measures Act, could deal with the subject by Order in Council.

So far as the railways, or railway, are, or is, concerned, I do not see that the situation presents insuperable difficulties. It seems to be a matter of estimate and calculation, and I venture to express the hope that, even now, means may be employed by the railways to meet the situation specially and in the national interest.

I would suggest that the Railway War Board, as well as the railway directly concerned, be urgently invited to reconsider the subject with a view to providing, if at all possible, as an emergency measure, the relief asked.

In the matter of the application of the Bell Telephone Company of Canada for leave to increase its rates; and the application of the city of Montreal (1) for particulars, (2) to amend Order No. 27848, (3) for an Order directing the Bell Telephone Company to furnish the city of Montreal with copies of all data, figures, etc., and (4) that if any increases in tolls, rates, etc., are granted the Bell Telephone Company the same shall be temporary and for a limited period of time.

Case 955.

Mr. W. H. Butler for the city of Montreal.

Mr. L. MacFarlane, K.C., Mr. C. F. Sise (general manager), Mr. E. Palm (comptroller), and Mr. P. A. McFarlane (commercial engineer), for the Bell Telephone Company.

Mr. I. S. Fairty for the cities of Toronto and Hamilton.

Mr. F. B. Proctor for the city of Ottawa.

Mr. J. E. Chapleau, K.C., for the city of Quebec.

Mr. J. A. Hutcheson, K.C., for the city of Brockville.

Mr. W. T. Henderson for the city of Brantford.

Alderman Symons for the Brantford Trades and Labour Council.

Mr. John Newstead (mayor), for the city of Guelph.

Mr. E. E. Ratz and Mr. George J. Lippert for the city of Kitchener.

Mr. J. C. Crawford (mayor), for the town of Sarnia.

Mr. G. A. Boyd (alderman), for the city of Sault Ste. Marie.

Mr. A. Beliveau for the town of Three Rivers.

Mr. J. W. Weldon for the city of Westmount.

Mr. J. Leblanc, K.C., for the town of Sherbrooke.

Mr. T. D. Bouchard (mayor), for the town of St. Hyacinthe.

Mr. Du'Chastel for the town of Outremont.

Mr. F. Fateux and Mr. James Wishart (secretary-treasurer) for the town of Verdun.

Mr. W. D. Lighthall, K.C., for the Union of Canadian Municipalities.

JUDGMENT.

The CHIEF COMMISSIONER:

On the application of municipalities, including the city of Montreal, Order No. 27848 for the delivery of particulars by the Bell Telephone Company was made by the Board.

At the time the question was considered the particulars asked for by the city of Montreal were general in their character and the city had not had the question considered by an expert versed in telephone rates and practices. Since the Order was made the city of Montreal has had the benefit of the expert advice of Mr. W. J. Hagenah,

of the firm of Hagenah & Erickson, of Chicago, and as a result of going into the matter with him desires further particulars. At the request of the city of Montreal a sittings of the Board was arranged for Friday, November 22, for the consideration of its further demands.

At this sittings Mr. Hagenah was called as a witness, and the position taken by the city of Montreal has been endorsed by the municipalities who appeared at the sittings, as above set out.

In addition to this application for particulars the city of Montreal also applied for an order that any rates that might be fixed by the present application of the company be temporary rates. The relief asked for in this application is stated as follows:—

“Wherefore for the reasons above stated, the city of Montreal applies for a preliminary judgment and order to the effect,—

“1. That if your Commission do increase the tolls, rates, and charges, incidental or otherwise, or grants any new ones for local exchange service in the Montreal Telephone Exchange district or for long distance service, that the same be only for a temporary and limited period of time.

“2. That at the expiration of the said period the tolls, rates, and charges, incidental or otherwise, now existing and in force shall revive.

“3. That if at the expiration of the said period the Bell Telephone Company makes application that the temporary increases and additions that may be granted by your Board for local exchange service in the Montreal telephone exchange district and for long distance service upon the application of the company be continued, or that the said increases be further augmented or increased, or for higher tolls, rates, and charges than now existing and in force, and for charges not now made, the company shall in such case make and submit to your Board a detailed valuation and inventory of the Montreal telephone exchange, a like inventory and valuation of the long distance system, and establish, in detail, the gross revenues and expenses of the Montreal telephone exchange and the long distance system separately; the city of Montreal to have the right, if it sees fit, to have representatives at the making of said inventories and valuations, and at the fixing and determining of the said gross revenues and expenses to check and control same as the work progresses.

“4. That your Commission reserve the right to reduce or cancel, before the expiration of said period of time, should the circumstances warrant it in the opinion of your Commission, each and any of the temporary increases and additions in the tolls, rates, and charges, incidental or otherwise, that might be granted on the company's application for local exchange service in the Montreal telephone exchange district or for long distance service, or to shorten the period of duration of said temporary increases and additions.”

I first deal with this question. In his examination Mr. Hagenah says:—

“... New York, Massachusetts, Maryland, Indiana, Illinois—of course you gentlemen are familiar with them. They have come to the conclusion that because of these abnormal conditions an emergency exists, that they cannot stop to go into extensive appraisals and inventory investigations of property, but they will analyze earnings and operating expenses for a number of years, and assuming—and it is purely an assumption—that the rates which prevailed before these abnormal conditions developed were equitable, they will analyze and see what have been the net earnings each year since that time. If the net earnings have declined very abruptly they will say that the departure between such net earnings and the net earnings before will measure the amount by which the company shall have an increase in its rates. The practice has been to grant such emergency increase as the figures disclose is necessary, making that effective generally for one year, during which time the Commission expressly

reserves jurisdiction of the case. Very often at such time, proceeding on the assumption, which is largely justified, I think, that these conditions will not go back to normal within one year, it may be in fact a number of years, and that the increase in rates may have to be for quite a length of time, they generally ask that the company prepare a full inventory and appraisal of its property and such analytical data as is necessary, so that the Commission at the end of the year, or eighteen months, the effective period, may be able to determine with more definiteness what the rate shall be until conditions become less disturbed and less abnormal, retaining all the time jurisdiction of the case so the burden of proof is not affected by the temporary relief given to the company.

"Q. Your idea then of what ought to be done is that while the fullest particulars should be furnished so that everybody gets to know just exactly what the business is and what the returns are, those particulars should be held over for examination and whatever is the proper relief for the immediate emergency should be granted without an immediate investigation?—A. Yes, if the Commission satisfy themselves that the company should be relieved immediately to such an extent as is shown to be necessary, that could be done without an expensive appraisal, but after that temporary relief is given, realizing that these conditions are abnormal and may last for probably 8 or 10 years, the Commission request the company to immediately prepare data to show the Commission that it is entitled to some measure of relief on a more or less permanent basis at the end of the effective period of one year or eighteen months."

"The CHIEF COMMISSIONER: Mr. Hagenah, on the temporary issue what do you think you should have before you before you can determine that?—A. I would think that in addition to the comprehensive schedule of information which you have asked for from the company as a whole that the Commission should take into consideration the gross and the net earnings from each of the exchange districts. I imagine the Bell Telephone Company of Canada is keeping accounts as to the revenue collected in each of the large exchange districts and its expenses, and while it probably does not pro-rate some of the general expenses, we might be able by some process of pro-rating to get at something reasonably accurate as a basis for an emergency rate."

The following statement of his position, made at the hearing, was adopted by him:—

"The CHIEF COMMISSIONER: He has already answered it. He says it is not necessary at the present time and ought not to be done. He says at this particular juncture if we find, as they found in the States, an emergency to exist, that the relief for the emergency ought not to be delayed by dilatory proceedings; but, on the other hand, whatever relief is given should be held down to a period, that the Board should see that it does not extend for any longer than there is necessity for it, and that in the meantime these detail matters of investigation should be gone on with so that at the end of the period of emergency the full subject can get that detailed information which it should get. That is what the witness says. He says those things ought not to be done now. Is that right?

"WITNESS: That is so. When the commissioner asks about each incorporated village, town, and city, I might point out that the information could be given only by the exchange areas the company carries on its books. It may have ten cities in one exchange area. It would be practically no work for the company to give us that information.

And much turns on this application. In order to appreciate how much turns upon it, it is necessary merely to state that the proper rate-basis, in the opinion of the Montreal expert, is that a local rate should be fixed for each locality, and that for the purpose of fixing the rate an inventory should be had of the company's plant and

equipment in such locality the expenses of operation arrived at, and provision made for a profit of 8 per cent on the value appraised.

There has been an immense increase in the cost of materials since the last detailed investigation was held by the Board, which covered the Montreal territory and took place in 1911. At the time of that investigation it was found that the company made but 8.28 per cent on its Montreal investment and the rates were therefore sustained.

In all probability, were an appraisal taken to-day it would be found that the value had increased at least 40 per cent and if Montreal be taken as a typical point (the result would be, of course, not absolutely the same in all municipalities) the general result would be an increase of 40 per cent in telephone rates.

It may be that to-day's high costs will be maintained for some considerable time; that labour charges and that class of material in which labour represents a large percentage of the cost will not materially decrease. On the other hand it is more than possible that the cost of installation and the values of plants will materially decrease.

In my opinion, should it be found necessary to increase the company's rates, they should be increased subject to the Board's further Order and to the further provision, in the meantime, that such data be collected and valuations made as will enable a proper telephone rate to be determined when conditions are ascertained to be constant.

I would, therefore, give effect to the spirit of the municipality's application and provide merely for temporary increases if necessary. In my view, however, their duration ought also not to be fixed. They should remain in effect until operating costs and plant values become normal, when the permanent rates ought to be considered.

I would treat the application as current, so that the onus of showing what the proper rate was would rest upon the company, and in order to bring about this result would grant temporary increases if found necessary, as already stated, until further order.

Although the matter, as dealt with on this temporary basis, does not require the exhaustive statements which otherwise might be necessary, I am nevertheless of the view that the municipalities are entitled to the fullest amount of information that the company's books, as kept, will enable them to give without recourse to special valuations and exhaustive cost studies, involving as it might the detail of the whole of the company's system.

Apart from the evidence of Mr. Hagenah, which shows that further details are necessary, there is no reason why the fullest information should not be given by the company, and no reason why the public should not be taken into its fullest confidence. I would therefore, order the delivery of further detailed particulars as follows:—

1. An analysis of plant values as shown by the company's books for the period from and including 1913 down to the 30th of September of the current year—this analysis to show: (a) real estate, subdivided into land and buildings, (b) equipment, (c) exchange lines, (d) and toll lines; the whole as subdivided and classified in the company's books; the summary in addition to show the whole plant in service as well as that part of the plant in process of construction.

2. An analysis of the company's gross revenue for the same period. This analysis should be so subdivided as to show the amount of the company's exchange revenues, toll revenues, and non-operating revenues, giving in full the details as disclosed by the company's books and classification. In so far as non-operating revenues are concerned, these, possibly, have nothing whatever to do with the issue. On the other hand they may, and such other details should be given of these non-operating revenues as will enable that issue to be easily determined. In order to do this it will be necessary for the company to give not only the amount of interest or miscellaneous income received, but also to show the character of the investment, how and when acquired, and to what account the capital invested was charged.

3. An analysis of the company's expenses, covering the same periods, to be divided into items covering general operation, commercial traffic, rights and privileges, insur-

ance, maintenance and repair, station removals and changes, depreciation of plant, and extraordinary repair charges. The whole to be given with as great detail as the classification and books of the company permit. Items for taxes should also be given, and an analysis of the tax charges made, with a view of showing whether the taxation is extraordinary as a result of the war or a permanent charge against the company's operations.

4. In view of Mr. Hagenah's criticism of the amount charged by the company to depreciation, a detailed analysis ought to be made of these items which will show, annually, the amount of depreciation charged, the average plant in service, and the resultant percentage of depreciation annually charged, calculated on the average plant in service.

5. A subdivision of depreciation should also be made which will show the basis on which depreciation is charged, subdividing it between buildings, central offices, equipment, exchange lines, and pole lines, the whole to be given in as full detail and subdivision as the company's books and classification permit.

6. Particulars should be given of the number of stations connected and disconnected, the net gain in stations, and the company's total stations annually for the whole period under review.

7. A statement giving the total number of long distance messages for the same period.

8. Particulars should also be given of the interest expenses showing the interest on the funded debt, its rate interest on current notes, bank interest on overdraft or arising from other indebtedness, the whole for the same period, together with a statement showing dividends paid.

9. A statement should also be given showing the company's surpluses for the same period, commencing with the balance on hand January 1, 1913, and carrying the amount down to date.

There are reserves for special objects, usually carried in the telephone business. There is the reserve for depreciation of plant, the reserve for deferred ordinary repairs, the reserve for fire insurance, the reserve for accident insurance, the reserve for depreciation of office furniture and factories, the reserve for depreciation of poles, the reserve for depreciation of plant, and the reserve for extraordinary repairs. Particulars are to be delivered by the company for the same period, giving details of these reserves and any others the company may have.

In order to give full information as to the company's financial position, details should also be given of the company's special accounts such as the suspense account, contingent and reserve account, and employees' benefit fund for the same period.

The evidence shows that the company's books do not distinguish between exchange expenses and long distance expenses, nor between charges to exchange capital account as distinguished from long distance capital account, with the exception of the long distance toll lines.

The evidence also shows that in the same manner the company's books are not being kept so as to give the receipts and expenses of different individual exchange stations. The company's books, however, do give information showing the expenses and receipts within given areas. As a further subdivision of the company's receipts and expenses, a special statement ought to be prepared which will give just as full information of local exchange and toll revenues, receipts, and expenses, as the company's books and classification will permit.

A further application has been made by Mr. Butler under the following circumstances: Montreal has applied for an inspection by their accountants. Montreal has been accorded the right to make this inspection, although perhaps much of it will become unnecessary in view of the quantity of information which the company has now been compelled to supply the municipalities. It is, of course, obvious that there has to be some limit to the number of accountants working on the company's books at the same time for the same object.

Toronto had a similar application, but has recognized this fact, and, as stated by its counsel, will in all probability accept the work of Montreal's auditors, Messrs. Price, Waterhouse & Co.

Mr. Butler points out that the work of Montreal's auditors will be of benefit not only to Montreal but also to Toronto and other cities, and generally for the public of Canada. It is quite true that Montreal's work, in case it is found that any exception can be taken to the company's books as such, would be of advantage to other municipalities in whose territory the Bell Telephone maintains a service.

Mr. Butler claims that in view of the fact that the auditing would thus be of general public benefit, the commission should pay the cost and expense of the audit by the city's auditors, Messrs. Price, Waterhouse & Co. The Board has no fund for such a purpose, and the matter is one in which the Canadian taxpayer, as such, is not in any event interested.

The Bell Telephone Company has no operations in many of the Canadian provinces. Its operations in fact are practically confined to Ontario and Quebec and do not cover the whole territory of these provinces. If Montreal desires to proceed with the inspection of the company's records by its auditors after it receives the particulars ordered, it has the right to do so. Any contribution to Montreal's expenses would seem to be a matter to be considered by the municipalities that are interested rather than by the country at large.

H. L. DRAYTON.

OTTAWA, December 5, 1918.

Commissioners McLean, Goodeve and Boyce concurred.

ORDER No. 27912.

THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA.

In the matter of the application of the Bell Telephone Company of Canada, hereinafter called the "telephone company," for leave to increase its rates;

And in the matter of the application of the city of Montreal for an Order (1) directing the telephone company to furnish the particulars specified and set out in detail in the application; (2) amending Order of the Board No. 27848, dated November 12, 1918, to require the telephone company to furnish and file with the Board and the city of Montreal the additional particulars set forth in the application; (3) directing the telephone company to furnish the city of Montreal forthwith in writing all figures, statistics, data, and other information which the telephone company will cite, adduce, or give in evidence in the course of the inquiry in its application for increased rates, as well as a copy of all exhibits, written submissions, documents, data, figures, and information of whatsoever nature that the telephone company proposes to file or will file as evidence in the course of said inquiry; and (4) providing (a) that if any increase of tolls, rates, or charges, or any new ones for local exchange service in the Montreal telephone exchange district, or for long distance service are granted by the Board, the same be for a temporary and limited period of time only; (b) that at the expiration of the period for which the said increased tolls may be allowed, the tolls, rates, and charges now existing and in force be revived; (c) that if, at the expiration of the said period, the telephone company applies to

extend the time within which said increases shall be in force, or that said increases be further increased, it be required to submit a detailed valuation and inventory of the Montreal telephone exchange and the long distance system and establish in detail the revenues and expenses of the Montreal exchange and long distance system separately; and (d) that the Board reserve the right to reduce or cancel before the expiration of said period of time each and any of said increases and additions in the tolls or to shorten the period of time said temporary increases or additions may be in force.

Case No. 955.

FRIDAY, the 6th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, Friday, November 22, 1918, in the presence of counsel and representatives for the city of Montreal, the telephone company, the cities of Toronto, Hamilton, Ottawa, Quebec, Brockville, Brantford, Guelph, Kitchener and Westmount, the towns of Sarnia, Sault Ste. Marie, Three Rivers, Sherbrooke, St. Hyacinthe, Outremont, and Verdun, the Brantford Trade and Labour Council, and the Union of Canadian Municipalities, the evidence offered at the hearing, and what was alleged,—

It is ordered: That the telephone company be, and it is hereby, required to furnish and file with the Board and deliver to the city of Montreal and other municipalities opposing the Telephone Company's application further detailed particulars as follows, namely:—

1. An analysis of plant values as shown by the telephone company's books for the period from and including 1913 down to the 30th of September of the current year—said analysis to show (a) real estate, subdivided into land and buildings (b) equipment, (c) exchange lines, and (d) toll lines; the whole as subdivided and classified in the telephone company's books; the summary in addition to show the whole plant in service as well as that part of the plant in process of construction.

2. An analysis of the telephone company's gross revenue for the said period from and including 1913 down to the 30th of September, 1918; said analysis to be so subdivided as to show the amount of the telephone company's exchange revenues, toll revenues, and non-operating revenues; the telephone company to give not only the amount of interest or miscellaneous income received, but also to show the character of the investment, how and when acquired, and to what account the capital invested was charged.

3. An analysis of the telephone company's expenses for the period from and including 1913 to the 30th of September, 1918, to be divided into items covering general operation, commercial traffic, rights and privileges, insurance, maintenance and repair, station removals and changes, depreciation of plant, and extraordinary repair charges. The whole to be given with as great detail as the classification and books of the telephone company permit. Items for taxes also to be given and an analysis of the tax charges made.

4. A detailed analysis which will show, annually, the amount of depreciation charged, the average plant in service, and the resulting percentage of depreciation annually charged, calculated on the average plant in service.

— 5. A subdivision of depreciation which will show the basis on which the depreciation is charged, subdividing it between buildings, central offices, equipment, exchange

lines, and pole lines, the whole to be given in as full detail and subdivision as the telephone company's books and classification permit.

6. Particulars of the number of stations connected and disconnected, the net gain in stations, and the telephone company's total stations annually for the said period from and including 1913 to September 30, 1918.

7. A statement giving the total number of long distance messages for the said period.

8. Particulars of the interest expenses showing the interest on the funded debt, its rate of interest on current notes, bank interest on overdraft or arising from other indebtedness, the whole for the same period, together with a statement showing dividends paid.

9. A statement showing the telephone company's surpluses for the same period, commencing with the balance on hand January 1, 1913, and carrying the amount down to date.

10. Particulars giving details of any reserve funds of the telephone company for the period from and including the year 1913 to September 30, 1918.

11. Particulars giving details of the telephone company's suspense account, contingent and reserve account, employees' benefit fund, and all other special accounts during the years mentioned.

12. A statement giving as full information of local exchange and toll revenues, receipts, and expenses as the telephone company's books and classification will permit.

H. L. DRAYTON,
Chief Commissioner.

Complaint of the Imperial Steel and Wire Company, Limited, of Collingwood, Ont., that they are being discriminated against as to the rates published by the Grand Trunk and Canadian Pacific Railway Companies on nails for export from Collingwood.

File No. 20291.1.

JUDGMENT.

The CHIEF COMMISSIONER:

This complaint was made by letter of the Imperial Steel and Wire Company, Limited, which reads as follows:—

"We are requested by the chairman of the transportation committee of Collingwood to bring the following circumstance to your attention:—

"We are shipping considerable quantities of nails to China and Japan, via Pacific coast ports, but owing to the attitude of the Canadian Pacific and Grand Trunk railways we are unable to compete on equal terms with Hamilton and Toronto manufacturers.

"The rate for export from Toronto to Vancouver via North Bay is 55 cents, whereas we are paying 72½ cents, made up by using the local rate to Toronto of 17½ cents, plus 55 cents from Toronto to Vancouver.

"As you are no doubt aware, there is an interchange track at Essa, and if this interchange were used the haul from Collingwood to Vancouver would be shorter than from Toronto to Vancouver.

"The railways may say there is no business out of Collingwood for the Pacific coast, but the following car numbers will prove the contrary. We may say in addition we have on our books at the present time orders for about 40 carloads also for shipment to China and Japan, via Pacific coast ports:—

Car Number.	Date Shipped.	To.
A. T. & M. F. 43842.....	Dec. 11, 1917.....	Vancouver.
C. R. I. 103494.....	Mar. 30, 1918.....	Seattle.
S. P. 17476	Apr. 20, 1918.....	Seattle.
C. B. & Q. 111078.....	June 12, 1918.....	Seattle.
L. V. 86490.....	June 15, 1918.....	Seattle.
C. & N. W. 115256.....	June 21, 1918.....	Seattle.
M. L. T. 33171.....	July 25, 1918.....	Vancouver.
P. & R. 4093.....	July 26, 1918.....	Vancouver.
A. T. & S. F. 9890.....	July 30, 1918.....	Vancouver.

"You will see from the above that over half of these cars were shipped via Seattle for the reasons above stated, the rate at the time of shipment being more favourable over American roads.

"Our contention is that we should at least have as favourable a rate as Toronto, and trust you will give this matter your consideration."

The Grand Trunk Railway Company makes the following reply to this complaint:—

"Referring to yours of the 9th ulto., our Tariff C.R.C. No. E-3366 provides for the application of the Toronto and Montreal rates from the points specified in Mr. Ransom's tariff No. 3, except as otherwise specified in tariff C.R.C. E-3366. Item referred to naming the 55-cent rate from Toronto and Hamilton on iron and steel articles is a specific item and the rates, in this item, would therefore not apply from the other points named in Mr. Ransom's tariff.

"The rate is still 55 cents from Toronto as against the rate from Collingwood of 72½ cents. The local rate from Collingwood to Toronto has been increased under the general advance in rates to 22 cents, and the present exports rate from Toronto is to be increased to 85 cents to bring it in line with the rates applicable from Buffalo, Pittsburg, and New York rate-points to the Pacific coast, and at the same time the application of this rate is to be extended to Collingwood, which will put this point on the same footing as other shipping points.

"The new tariff is now in hand and will be made effective at the earliest possible date.

"With this explanation we trust that the Board will agree that no further action is necessary in connection with this matter at the present time."

And that made by the Canadian Pacific Railway Company reads:—

"This company's export tariff (C.P. E-3045, C.R.C. E-3366) provides for the application of the Toronto and Montreal rates from the points specified in Ransom's tariff No. 3, save as otherwise specifically noted. However, this tariff provides for a special rate of 55 cents from Toronto and Hamilton on iron and steel articles, which, therefore, is not applicable to the other points named in Ransom's tariff.

"As stated above, the export rate from Toronto was at the time of this complaint and still is 55 cents (tariff C.P. E-3045, C.R.C. E-3366), as against an export rate from Collingwood of 72½ cents, made up as stated in the complaint. The local rate from Collingwood to Toronto has since been increased under the general advance in rates to 22 cents.

"However, the present export rate from Toronto is to be increased to 85 cents, to bring it in line with the rates applicable from Buffalo, Pittsburg, and New York rate-points to the Pacific coast. At the same time, the application of this rate is to be extended to Collingwood, which will put this point on the same footing as other eastern shipping points. The work of issuing this new tariff is now in hand, and it will be made effective at the earliest possible date.

"With this explanation I trust that the Board will agree that no further action is necessary in connection with this matter at the present time."

The real issue at the time the complaint was made was as set out in the complainant's letter. The companies were charging 72½ cents on the movement from Collingwood, as against a rate from Hamilton and Toronto for a movement to common destination on a like commodity of 55 cents. It is also true that the route from Hamilton and Toronto, on the one hand, and Collingwood on the other, became common from Allandale on. The mileage from Collingwood to Allandale is 32 miles and from Toronto to Allandale 63 miles.

Notwithstanding this fact the 72½ cents Collingwood rate is built up by applying on the Toronto rate of 55 cents the local Collingwood-Toronto rate of 17½ cents. In all probability traffic never moved in this manner. The whole point made by the railways is that the special transcontinental rate of 55 cents from Hamilton and Toronto on iron and steel articles is not applicable from Collingwood to destinations on the Pacific coast.

It is, of course, true that these transcontinental rates are on a lower basis than other rates, and if the transcontinental tariffs were so constructed, that a movement from Collingwood to Vancouver wharf on the ordinary rate-basis would be really considerably higher than the 72½ cent-rate which has been charged. If, however, Collingwood produces in sufficient volume traffic for transcontinental transportation as is produced in Hamilton and Toronto, it is also perfectly clear that transcontinental rates ought also to be supplied from that point.

It well may be that the intention of the companies was to confine the special transcontinental rate to centres having a large export business, and that they did not so regard Collingwood. The tariff, however, has to speak for itself and must be interpreted literally without having regard to unexpressed railroad intentions.

On page 4 of the tariff C.R.C. E-3677, and under the heading "Application of Rates," the tariff reads: "Rates named herein apply only from points taking Toronto or Montreal rates shown in G. C. Ransom's tariff C.R.C. No. 3, supplements thereto, and reissues thereof (except as otherwise specified)."

The tariff C.R.C. No. 3 referred to specifically names Collingwood as a point which shall take Toronto rates. Referring again to the specific tariff, C.R.C. No. E-3677, at page 9, export commodity rates are given on articles of iron and steel from Toronto, Hamilton, Montreal, New Glasgow, and Sydney to Vancouver wharf. These commodity rates are not limited by the word "only" or any other appropriate word. The tariff says nothing to indicate that the application from other points set out on page 4 of the tariff is not to apply. In the absence of such a provision it would seem clear that Collingwood, as a point shown in the Ransom tariff taking Toronto rates, is entitled to them.

This result runs through the tariff as a whole, as in dealing with class rates shown at page 5, the provision reads:—

"The following rates will apply from points taking Toronto or Montreal rates to Vancouver wharf when destined to group 1 points (group 1 points being those in the Orient as distinguished from the Australasian destinations in group 2).

The scheme of the whole tariff is that rates shall apply not only from the specific points mentioned, but also from points taking Toronto or Montreal; etc., rates, and

the provision as to application of rates already quoted gives the necessary information as to what these points are.

On the ground of intention I should very much doubt that the companies proposed to charge a rate from Collingwood, assuming there was any movement from that point of 72½ cents when they at the same time provided a rate from a point as far removed as New Glasgow of a like amount.

The Board has nothing to do with the question of refunds. The Board, however, can and does construe the effect of tariffs filed and declare what the proper rate for a given movement is. I am of the opinion that an Order should go declaring that the rate applicable to the movement from Collingwood to Vancouver wharf is the rate given by the tariff covering movements from Hamilton and Toronto, namely, 55 cents.

I now deal with the new rates of 85 cents. Collingwood takes, with other points, the benefit of this 85-cent rate. It now will be a higher charge than the former combination of rates, but the unfairness and discriminatory character of the former situation disappears.

Application was made by the companies to increase these transcontinental rates in the *Fifteen Per Cent Case*, so-called. No direct increase was then allowed, but the matter was treated as follows in the judgment issued:—

“Transcontinental commodity rates, however, are directly competitive. If unduly increased over the American transcontinental rates, the results well might be that Canadian produce would not move at all in cases where American produce was available, or in some other instances, if it did move, it would move over American lines. I would not at the present advance the transcontinental commodity rates unless these rates are advanced in conformity with advances made by the American lines.”

These transcontinental commodity-rates have since been advanced in American territory. The export rate now from the governing point in American territory, that is Buffalo, has been increased to 85 cents to Seattle for export. The Canadian carriers are entitled to file, as they have now filed, a similar rate.

December 6, 1918.

Commissioner McLean concurred.

Re increased minimum weight on canned goods, in carloads.

File No. 28192.6.

JUDGMENT.

The CHIEF COMMISSIONER:

Complaints have been made as to the increase in the minimum weight applicable to canned goods, in carloads, moving at commodity rates. These complaints have been forwarded from points in New Brunswick, Nova Scotia, Prince Edward Island, and Ontario.

The question has been taken up actively by the Board with the Canadian Railway War Board, which in the first instance commenced the campaign for heavier loadings. Owing to car shortages and the great expense in railway operation, it was apparent to everybody that, to the full extent that minima could be increased and a more intensified use made of the equipment available for public business, without at the same time throwing burdens upon the traffic carried, increases ought to be made; and these increases, speaking generally and apart from the question of flour, which was specifically dealt with by the Board, were arrived at by conferences with interested shippers. No action whatever was taken by the Board in connection with canned goods.

The Canadian Railway War Board, on November 21, 1918, wrote:—

"We have had a thorough investigation made into the circumstances and are unable to find that proper grounds for this complaint exist. The communications which reached you from a few of the dealers in canned goods appear to have been inspired by the Dominion Cannery, Limited, who, for reasons of their own, seem to have undertaken a campaign to nullify the efforts which have been made by the railways and a large proportion of their patrons to increase the railway efficiency by reducing to the minimum the amount of wasted effort involved in hauling an unnecessarily high proportion of tare weight of equipment. Enclosed, for your information, is copy of a circular letter received here as having been addressed by the Dominion Cannery to their customers. Further comment in connection with this communication appears to be unnecessary.

"Prior to the receipt of the enclosed communication no complaint was registered, so far as we can ascertain, by any of the local dealers who subsequently wrote you. It is the consensus of opinion of those who are well acquainted with the canned goods business in the Maritime Provinces that in the vast majority of instances there is no difficulty in maintaining the 40,000-pound minimum, and that the dealers, if permitted to do so by the larger shippers, such as the Dominion Cannery, will readily adapt their handling arrangements to the 40,000-pound minimum.

"It will be remembered that consignees, if they find it absolutely necessary to depart from the present commodity minimum, are permitted to ship 24,000 pounds at the regular fifth-class rate. In the West I may say the minimum on canned goods is 60,000 to 70,000 pounds and cars have been so loaded for many years. It will be remembered, also, that the minimum made effective by the United States Food Administration is 60,000 pounds and these regulations have been in effect in that country for some months."

The copy of the letter claimed to have been written by the Dominion Cannery, Limited, June 20, 1918, and referred to in the Canadian Railway War Board's letter, is as follows:—

"We understand that the Canadian Railway War Board has asked the Board of Railway Commissioners for authority to increase minimum weights on canned goods from 24,000 to 60,000 pounds.

"We are advising you of this because we know this will have a serious effect on your business, as in many instances it is not possible for you to make up carloads of 60,000 pounds, and the tendency will be to throw this business into the large centres and force the dealers in your districts to pay the excess freight between carload and less carload on their purchases.

"If this ruling will injuriously affect you at all, we suggest that, without using our name, you take this matter up with your member of the Dominion House; also send your protest to the Canada Food Board, as well as the Canadian Railway War Board."

The Dominion Cannery, Limited, are very largely interested in the question. The great bulk of the movement is originated by them, and they are naturally interested in obtaining as favourable transportation terms for their product as possible.

The letter of the Canadian Railway War Board and copy of the circular letter of June 20, 1918, were forwarded to the Dominion Cannery, Limited, for their answer and comments, and the Board has received the following reply:—

"We have your letter of the 26th, file 28192.6, in reference to minimum weights on canned goods. The understanding was that when these minimum

weights were increased from 30,000 to 40,000 pounds, that it was for a war measure only and for the duration of the war only. Furthermore, you have a letter from the Canadian Manufacturers Association regarding this same subject, having it fully understood that the increase was put into effect with the understanding between the railways and shippers that same would expire at the end of the war.

"Under these circumstances we do not feel it necessary to enter into full details regarding this increased minimum, as we can stand the inconvenience and extra expense until peace is actually declared. At this time we expect that the minimum will be automatically reduced again to 30,000 pounds. If, however, the railways do not intend to do this, then we wish to seriously object to continuation of 40,000 pounds as minimum for canned goods to points covered by commodity rates to Eastern Canada after peace has been declared."

Canned goods, of course, can be sent at the appropriate class-rate in as small quantities as may be desired, and the minimum regulation applies merely to the lower commodity rate. The old minimum was 30,000 pounds. The present minimum is 40,000. The Canadian Railway War Board at one time endeavoured to have the minimum raised to 60,000 pounds, which would have resulted in loading to capacity of the older box cars and a loading to 75 per cent capacity of the newer cars, which usually have a capacity of 80,000 pounds, while others now go as high as 100,000 pounds. The minimum of 60,000 pounds would have meant that 75 per cent of the loading capacity of the car would have been utilized; the former minimum of 30,000 pounds meant the utilization of but 50 per cent of the older type of car and 38 per cent of the 80,000-pound car equipment.

In view of the letter of the Dominion Cannery, Limited, who represent, as stated, the chief trade interest on the question, no action should be taken on the present applications, but the matter will be left open for future consideration on any complaint which that company, or others interested, may desire to make subsequent to the declaration of peace.

December 6, 1918.

Commissioner McLean concurred.

Complaint of the Dominion Cannery, Limited, of Hamilton, Ont., against the cancellation by the Canadian Northern Railway Company of several carload commodity-rates on canned goods from points on its line to points in Quebec and the Maritime Provinces.

File 27256.4.

JUDGMENT.

The CHIEF COMMISSIONER:

This application was heard at the Board's sittings in Toronto on Thursday, October 17, 1918. It was represented by the Canadian Northern Railway Company that these rates were cancelled by the Intercolonial Railway, and that the Canadian Northern, while perfectly willing to maintain rates, could not maintain them in view of the attitude of the Intercolonial.

At this time the Intercolonial system was operated independently of the Canadian Northern and the Intercolonial, as a Government road, was not subject to the jurisdiction of the Board. The matter, however, was taken up by the Board with the management of the Intercolonial with the view of adjusting the situation if possible. The Intercolonial management has taken the stand that it did not cancel the rates or require their cancellation, but that they were cancelled by the Canadian Northern.

It would appear that the real difficulty between the systems interested rests on divisions. The rates ought never to have been taken out. Whatever the merits may be as between the different systems, the matter is now entirely in the hands of the management of the Canadian Northern, who now control and operate the Intercolonial system. I am of the opinion that an Order should go providing that the former joint rates, as increased by the Order in Council No. P.C. 1863, should immediately be put into effect by the Canadian Northern. The district suffering is entitled to the service, and the necessary Order ought now to go.

December 6, 1918.

Commissioner Goodeve concurred.

ORDER No. 27914.

In the matter of the complaint of the Dominion Cannery, Limited, hereinafter called the "complaints" against the cancellation by the Canadian Northern Railway Company of commodity rates on canned goods from points on its St. Catharines division to points in the province of Quebec and the Maritime Provinces on the Canadian Government Railway.

File No. 27256.4.

SATURDAY, the 7th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, October 17, 1918, in the presence of counsel and representatives for the complainant, the Canadian Northern, the Grand Trunk, and the Canadian Pacific Railway Companies, and what was alleged; and upon reading the written submissions filed on behalf of the Canadian Government Railway; and upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, required to restore and put into effect, not later than December 23, 1918, the commodity rates on canned goods from shipping points on its St. Catharines division to points on the Canadian Government Railway in existence prior to August 12, 1918, as increased by Order in Council of the Governor General in Council, No. P.C. 1863.

H. L. DRAYTON,
Chief Commissioner.

Application of the State Elevator Company, Limited, Winnipeg, Man., for a ruling of the Board in the matter of a claim against the Canadian Pacific Railway Company for demurrage charges.

File 1700.187.

The ruling of the Board is set out in the following letter to the applicant company:—

NOVEMBER 22, 1918.

DEAR SIR,—Referring to the matter of your company's claim against the Canadian Pacific Railway Company for demurrage charges, which has been the subject of investigation and consideration by the Board, I am directed to write you as follows:—

In the period between December 16, 1916, and April 29, 1917, certain embargoes were in effect on the Canadian Pacific Railway in Western Canada. Under Embargo No. 331, dated Winnipeg, December 16, 1916, it was provided:—

“On account of there being more cars loaded with grain than can be accommodated in elevator space at Fort William, effective at once the loading of grain for Fort William or Port Arthur is prohibited, and hereafter shipments of grain from interior points will only be accepted when consigned to elevators or mills, Kenora and points west thereof, including the terminal elevators at Moosejaw, Saskatoon and Calgary, and it should be distinctly understood that shipments of grain billed in this manner will not, under any circumstances, be diverted to Fort William.”

Embargoes Nos. 354, 355, dated Winnipeg, January 29, 1917, read:—

“Western Lines Embargo No. 354.”

“On account of accumulation and lack of storage space at the lake front, effective at once and until further notice, the loading of grain on the Manitoba district for Fort William or Port Arthur is prohibited. Please be governed accordingly and acknowledge receipt.”

“Western Lines Embargo No. 355.”

“On account of accumulation and lack of space at the lake front, embargo is placed on the loading of grain to Fort William from all stations on the Saskatoon division. Please be governed accordingly and acknowledge receipt.”

Embargo No. 371, dated Winnipeg, February 1, 1917, read: “Embargo No. 331, dated December 16, 1916, is revised to read as follows”:—

“Loading of grain to Fort William or Port Arthur is positively prohibited except as specifically authorized. Shipments of grain for interior points when consigned to elevators or mills, Kenora or west thereof, may be accepted providing they are not covered by special embargo. Shipments billed to local points will under no circumstances be diverted beyond points of destination.”

On April 29, 1917, notification of the cancellation of the foregoing embargoes was issued.

In the period covered by these embargoes shipments of grain were made from Winnipeg by your company to the Lake of the Woods Milling Company, Keewatin.

The arrangements under which these shipments were made is explained by your company in a letter dated May 14, 1917, to Mr. Campbell, Secretary of the Canadian Freight Association, Western Lines, as follows:—

“For your information we desire to say that prior to the grain being shipped we made arrangements for delivery to the Lake of the Woods Milling Company at Keewatin, and each car was consigned to that company. A large number of our shipments were duly accepted at Keewatin, but as the grain contained in the cars enumerated in our claim was not quite up to the grade required, the Lake of the Woods Company gave immediate diversion instructions to the C.P.R. for conveyance to the Western Terminal Elevator Co., at Fort William, where ample space was at once reserved for same.”

There is a dispute as to the status of the shipments to Keewatin. It is contended by Mr. Campbell that shipments were made to that point with a view to defeating the embargo on Fort William and Port Arthur; and that under the billing as made cars were obtained out of turn as compared with the

movement to Fort William direct thus creating a discrimination in favour of the movement through Keewatin to Fort William as compared with the straight movement to Fort William.

Your company in a communication of July 4, 1917, to Mr. Campbell, states:—

“It has already been explained in previous correspondence that complete arrangements were made with the Lake of the Woods Milling Company for delivery of all the grain shipped, including the oats which you say you cannot understand.”

In the same communication your company continues:—

“ our communications should be sufficient to satisfy you that special arrangements existed for delivery of *all* our shipments of wheat and oats to the Lake of the Woods Milling Company at Keewatin. A number of our shipments were delivered at that point; but considerable difficulty arose owing to the C.P.R. having accepted numerous shipments from other quarters consigned to Keewatin, *which were neither ordered, required or authorized* by the milling company. This blocked the Keewatin yards with many more cars than the milling company could handle with their ordinary staff and extra men had to be sent down to cope with the extraordinary situation created by the unauthorized action of the Canadian Pacific Railway. The milling company had to deal with cars in the order placed by the railway, and consequently the mills became loaded to capacity with grain other than that ordered by the milling company, and meantime our cars (containing shipments ordered by the milling company) had to wait their turn in the Keewatin yards; but when eventually placed the mills could not accept delivery as they were then full up with the particular grades offered. It will therefore be seen that the railway catered to a variety of shippers, who, apparently, were endeavouring to overcome the alleged embargo, and in consequence a number of our legitimate shipments could not be accepted at Keewatin, and as this was the direct outcome of mismanagement by the C.P.R. we certainly fail to see why we should pay demurrage charges for railway negligence.”

The milling company in a statement on file addressed to Mr. Campbell, under date of August 9, 1917, says:—

“Mr. C. S. Matheson, who permitted elevator companies shipping their grain to Keewatin, provided shipments consisting of straight grades Nos. 1 to 4, states that if the State Elevator Company made the statement you claim in your letter, it is false, and that no company was authorized to ship oats or other grains.”

In reply, your company emphatically states that there was a “request” of a representative of the milling company to ship oats.

There is thus contradiction as to the terms of the agreement or arrangement between your company and the milling company. The milling company states the arrangement was limited to grades Nos. 1 to 4, and exclusive of oats or other grains; your company admits that “the grain . . . in our claim was not quite up to the grade required.” If there was an arrangement as to grades this must have been known before the shipments from Winnipeg were made. At the same time, there is a contradiction by your company of the statement made the milling company as to the scope of the arrangement. It is stated that diversion orders were given by the milling company. It is not stated as to what authority, if any, the milling company was acting under in giving such instructions. Nor is it suggested that the milling company was unaware of the terms of the embargoes.

The diversion orders covered one car of oats and fifteen cars of wheat. Two cars were held at Keewatin for 14 days; two for 12 days; two for 11 days; and two for 9 days. Demurrage amounting to \$475 accumulated. It is contended that this charge was not proper and should not be collected.

It is contended by your company that even if the embargo was effective on the Keewatin-Fort William movement, the fact that the diversions were immediately accepted by the railway was in effect an abrogation of the provisions of the embargo so far as you are concerned. Mr. Campbell states that there was no undertaking to forward immediately, and that the railway undertook to forward the cars in their turn according to the date of arrival at Keewatin and as soon as conditions would warrant them accepting the traffic.

Embargo No. 331 permitted consignments of grain to elevators or mills, Kenora and West, and further provided that grain so billed would not "under any circumstances be diverted to Fort William." The difference in wording in Embargoes 354 and 355 is thus explained by Mr. Campbell. "Embargoes 354 and 355 were renewals of No. 331 which had been issued more than a month previously and it was found that some agents were overlooking the embargo regulations and accepting some shipments of grain for Fort William." Embargo No. 371, while permitting shipment to Kenora and West, provided that "shipments billed to local points will under no circumstances be diverted beyond points of destination." The embargoes read together set out (1) the embargo on Fort William and Port Arthur; (2) that shipments would be accepted for local points not embargoed; and (3) that shipments billed to local points would not be accepted for diversion beyond point of destination.

Mr. Campbell pointed out to you the embargoes existing. You rejoined "We do not know anything of the embargo to which you allude, but presume this would be effective against points west of Winnipeg only, and not between Keewatin and Fort William." And it is contended that "if even the alleged embargo was in operation between the two latter stations we consider that the Canadian Pacific Railway Company nullified same by accepting diversion instructions from the Lake of the Woods Milling Company."

It was a matter of knowledge within the grain trade that embargoes affected that trade during the period in question on the movement to Fort William and Port Arthur.

The record shows that embargoes existed and that their terms were explicit. On the facts as stated, the allegation that your company was unaware of the existence of the embargoes does not appear to be material. At any rate, the materiality of notice has not been argued. On the facts as submitted the circumstances under which the demurrage accrued are dependent on the terms of the arrangement, or agreement, existing between your company and the milling company. Into these the Board has no power to examine and adjudicate.

Yours truly,

A. D. CARTWRIGHT,
Secretary.

The Secretary-Treasurer,
The State Elevator Co., Ltd.,
Grain Exchange,
Winnipeg, Mann.

Application of R. L. Shimmin, of Edmonton, Alta., for an order disallowing Item No. 8-B in Supplement No. 5 to F. G. Airy's Express Tariff C.R.C. No. 1972, which provides for the cancellation of the arrangement whereby fish, in carloads, is carried at net weight from Edmonton to points in the United States, shown as Item No. 8-A in the preceding Supplement No. 4, which item was continued in effect by Order of the Board No. 25254, August 11, 1916.

File No. 27101.1.

The ruling of the Board is set out in the following letter which was sent to the applicant and the express companies:—

NOVEMBER 27, 1918.

DEAR SIR,—Referring to the above application of Mr. R. L. Shimmin for the disallowance of proposed cancellation of the arrangement for carrying fish from Edmonton to points in the United States at net weights, heard at the sittings of the Board in Edmonton on the 19th June, 1917, and which since that date has been the subject of further consideration and investigation by the Board through its Traffic Department, I am directed by the Board to state as follows:—

In Item No. 8-B of Supplement No. 5 of F. G. Airy's Tariff C.R.C. No. 1972 it was proposed to place the rates on all fresh-water fish on an equal basis, that is, by making them all subject to official classification weights. This arrangement provides that they shall be carried on the net weight plus 25 per cent for ice, when supplied.

At the hearing in Edmonton on June 19, 1917, the applicant argued that Edmonton should have the benefit of the same arrangement as to weight as existed on salt-water fish shipped from the Pacific coast.

The conditions and competitive features in connection with salt-water fish in the Pacific coast are well known. The rates were fixed from Seattle and other United States coast points and were afterwards applied from Vancouver and later from Prince Rupert strictly on account of competitive conditions.

There is not the same element of competition at Edmonton or other interior points from which fresh-water fish are shipped.

When Supplement No. 5 to Airy's Tariff C.R.C. No. 1972 was issued there were in effect a number of rates from points in Manitoba to points in the United States, which provided for transportation of fish at net weights. Since that date, however, all of these arrangements have been cancelled and rates are now subject to the official classification basis.

At present, therefore, Edmonton is the only interior point in Western Canada having rates based on net weight and, such being the case, it is evident that discrimination exists in connection with shipments from that point.

In view of the facts above set out the Board is of the opinion that it would be proper to rescind its Order No. 25254 of August 11, 1916, and to permit the publication of rates from Edmonton on the basis of the official classification, and an order will forthwith issue accordingly.

Yours truly,

A. D. CARTWRIGHT,
Secretary, B.R.C.

ORDER No. 27907.

In the matter of the Order of the Board No. 25254, dated August 11, 1916, made upon the application of R. L. Shimmin of Edmonton, Alta., and suspending until further order Item No. 8-B in Supplement No. 5 to F. C. Airy's Tariff C.R.C., No. 1972 and continuing in effect Item No. 8-A in Supplement No. 4 to Tariff C.R.C. No. 1972.

File No. 27101.1.

FRIDAY, the 29th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Edmonton, June 19, 1917, R. L. Shimmin of Edmonton, appeared in person and the Express Traffic Association being represented at the hearing; and upon reading the written submissions filed on behalf of the interests affected; and upon the report and recommendation of the Traffic Officer of the Board,—

It is ordered: That the said order of the Board No. 25254, dated August 11, 1916, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 255.

In the matter of the question of more adequate flagging protection on double tracks and the proposed amendment to Rule D-35 of the "General Train and Interlocking Rules" as outlined in circular of the Board No. 163, dated April 9, 1918, and submitted for consideration to the railway companies.

File No. 4135.38.

WEDNESDAY, the 20th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the replies filed by and on behalf of the railway companies subject to the jurisdiction of the Board, and the written submissions and representations made to the Board on behalf of the Brotherhood of Locomotive Engineers; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the "General Train and Interlocking Rules," approved by Order of the Board No. 7563, dated July 12, 1909, be, and they are hereby, amended by striking out the first paragraph of double track Rule 35 and substituting therefor the following:—

"D-35. A yellow flag or yellow light placed beside the track on the same side as the engineer of an approaching train, or, where the practice is for trains to run to the left, a yellow flag or yellow light placed on the left side of the track, as well as on

the same side (between tracks) as the engineer of an approaching train, so that the engineer of the approaching train shall have a clear view of said signal for a distance of at least 1,200 feet, indicates that the track 3,000 feet distant is in condition for a speed of but 6 miles an hour, unless otherwise instructed, and the speed of the train will be controlled accordingly. A green flag or a green light placed beside the track on the same side as the engineer of an approaching train, or on the left side of the track, if so operated, at a point beyond the slow track, indicates that full speed may be resumed."

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 256.

In the matter of section 276 of the Railway Act as amended by section 7 of chapter 37 of 7-8 George V, repealing subsection 1 of section 276 of the said Act and substituting therefor the following:—

"Whenever in any city, town, or village, any train not headed by an engine is passing over or along a highway at rail level which is not adequately protected by gates or otherwise, the company shall station on that part of the train, which is then foremost a person who shall warn persons standing on, or crossing, or about to cross the track of such railway."

And in the matter of rule 102 of the "General Train and Interlocking Rules," paragraphs 1 and 2 of which read as follows:

"When cars are pushed by an engine (except when shifting and making up trains in yards where there are no public highway crossings at rail level) a flagman must take a conspicuous position on the front of the leading car."

"Whenever in any city, town, or village, cars are passing over or along a highway at grade not headed by an engine moving forward in the ordinary manner, a man must take a conspicuous position on the foremost car, or tender, if that is in front, to warn persons on the highway."

File No. 25434.

WEDNESDAY, the 20th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That paragraphs 1 and 2 of said rule 102 of the "General Train and Interlocking Rules" be, and they are hereby, rescinded and the following substituted therefor:—

"(1) When cars are pushed by an engine (except when shifting and making up trains in yards where there are no public highway crossings at rail level, or where there are public highways crossings at rail level adequately protected by gates, or otherwise) a flagman must take a conspicuous position on the front of the leading car."

"(2) Whenever in any city, town, or village, cars not headed by an engine are passing over or along a highway which is not adequately protected by gates, or otherwise, at rail level, a man must take a conspicuous position on the foremost car to warn persons on the highway."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27877.

In the matter of the application of the Bell Telephone Company of Canada, hereinafter called the "telephone company," under sections 247 and 248 of the Railway Act, for leave to exercise its powers of constructing, maintaining, and operating its lines of telephone installed in and by underground conduit in the location hereinafter particularly described in the city of London, province of Ontario.

File No. 28948.

WEDNESDAY, the 20th day of November, A.D 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application and what is alleged in support thereof, the answer filed on behalf of the corporation of the city of London in objection thereto, and the reply of the telephone company,—

It is ordered: That the telephone company be, and it is hereby, granted leave to exercise its powers of constructing, maintaining, and operating its lines of telephone installed in and by underground conduit in the following location, in the city of London, province of Ontario: On Talbot street, commencing at the telephone company's manhole, located at the intersection of Talbot and Dundas streets, and running south approximately 150 feet to the first lane-way off Talbot street running east.

2. The work to be carried on under the supervision of the engineer of the city of London and the utilities commission, provided that, if any question arises with regard to such supervision, it shall, on application, be dealt with by the Electrical Engineer of the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27896.

In the matter of the application made on behalf of the New York Central and Rutland Railroad Companies, hereinafter called the "applicant companies," for an Order staying the enforcement of General Order of the Board No. 199, dated June 24, 1917, as amended by General Order No. 226, dated April 4, 1918, requiring railway companies within the legislative authority of the Parliament of Canada to equip their locomotives used in road service with headlights as set forth in the Order in so far as the said Order affects railways engaged in international traffic, pending the decision of the United States Courts upon the question of the jurisdiction of the Interstate Commerce Commission to make the Order similar in terms to the Order of this Board complained against.

File No. 6511.

THURSDAY, the 21st day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 11, 1917, in the presence of counsel for the applicant companies, the Michigan Central, the Boston and Maine, and the Maine Central Railroad companies, the Grand Trunk, the Canadian Pacific, the Canadian Northern, and the Toronto, Hamilton, and Buffalo Railway companies, representatives for the Brotherhood of Locomotive Engineers and for the Brotherhood of Firemen and Enginemen, and what was alleged at the hearing, and the written submissions filed; and upon its appearing that the appeal from the Order of the Interstate Commerce Commission pending at the time the application was made has been abandoned,—

It is ordered: That the application herein be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27886.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," under section 29 of the Railway Act, for an Order rescinding the Order of the Board No. 27461, dated July 22, 1918, made upon the complaint of Plunkett & Savage, against a heater charge of \$22.50 per car from Minneapolis, Minn., to Calgary, via the Minneapolis, St. Paul and Sault Ste. Marie and Canadian Pacific Railways, on five carloads of bananas ex New Orleans, declaring that the said heater charge was wrongfully made and authorizing the applicant company to repay to the complainants the excess amount charged and collected by it on the said shipments.

File No. 18855.18.

MONDAY, the 25th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and upon the report of the Chief Traffic Officer of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

2. That the said Order of the Board No. 27461, dated July 22, 1918, be, and it is hereby, suspended pending hearing and further Order of the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27887.

In the matter of the application of the Canadian Pacific Railway Company, herein-after called the "applicant company," under section 29 of the Railway Act, for an order rescinding the Order of the Board No. 27458, dated July 22, 1918, made on the complaint of the Vipond Fruit Company of Winnipeg, against a heater charge of \$15 per car on bananas from Minneapolis, Minn., to Winnipeg declaring that the said heater charge was wrongfully made and authorizing the applicant company to refund the said amount to the complainant company.

File No. 23540-8.

MONDAY, the 25th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and upon the report of the Chief Traffic Officer of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

2. That the said Order of the Board No. 27458, dated July 22, 1918, be, and it is hereby, suspended, pending hearing and further Order of the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27890.

In the matter of the application of the Canadian Northern Railway Company, herein-after called the "applicant company," for an Order extending the time within which it is required by the Order of the Board No. 27493, dated July 29, 1918, to move its station building, siding, and loading platform from its present location about one mile northwest of Looma, Alta., to a point at or near the north-east quarter of section 34, township 50, range 23, west of the fourth meridian.

File No. 28572.

TUESDAY, the 26th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the time within which the said work may be completed be, and it is hereby, extended until the 15th day of June, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27897.

In the matter of the application of the Toronto, Hamilton and Buffalo Railway Company, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open for the carriage of traffic that portion of its second main line of railway between Stoney Creek, mileage 31.06, and and Kinnear, mileage 35.33.

File No. 28230.7.

THURSDAY, the 28th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Engineer of the Board and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic that portion of its second main line of railway between Stoney Creek, mileage 31.06, and Kinnear, mileage 35.33, in the province of Ontario.

H. L. DRAYTON,
Chief Commissioner.

Application of the Express Traffic Association of Canada re tolls for cartage service to West St. John, N.B.

File No. 4214.149.

The decision of the Board is set out in the following letter which was sent to the representatives of the parties interested:—

DEAR SIR,—Referring to the above application, heard at the sittings of the Board on July 2, 1918, and in which judgment was then reserved, I am now directed to inform you that the Board has reached the following decision in regard to the matter:—

Order No. 19086 of April 17, 1913, following a hearing at St. John and an inspection by the Board's Chief Traffic Officer, fixed the present free collection and delivery area, the city recorder, Mr. Baxter, who represented the city in the present proceedings, being a consenting party. That order fixes practically the whole front of the city proper as the cartage boundary on the water side, running from the head of Courtney bay, on the one hand, to Spar cove on the river, a considerable distance above the falls bridge, on the other. No exception was or is taken to this sweep.

The order provides that to and from West St. John the companies may charge a cartage toll of 10 cents for each individual shipment of 100 pounds or less, and 15 cents for each individual shipment of over 100 pounds up to 500 pounds. It was not considered necessary to provide for any greater weight, and according to Mr. Ham, secretary of the Express Traffic Association of Canada, in the present proceedings, the order is still sufficient so far as the resident population is concerned. War conditions have, however, diverted considerable traffic from the freight to the express service, much of it weighing over 500 pounds, and it is this circumstance, together with the increased cost of the service as a whole, that has led to the application. It is to be remarked, however, that the companies met the heavier weights by the simple expedient of doubling the 15-cent toll and collecting 30 cents up to 1,000 pounds.

As the distance by way of the bridge is very long and circuitous, the public ferry is used entirely. The ferry toll for a one-horse vehicle, the only kind the companies use in St. John, is 8 cents, empty or with a maximum load of one ton, making 16 cents for the round trip, and this outlay by the companies was a consideration in fixing the tolls in the order.

At that time the Board's tolls represented the charges actually paid by the Dominion Express Company to outside carters; but these, within seven months after the order issued, raised their prices, with the result that the Dominion and Canadian companies each added a wagon to its equipment and undertook the service themselves. It will be noted that Mr. Ham assigned the unsatisfactory service of the independent carter as the reason for the change, while his original application gives the impression that it was due to the carters' increased charges, and makes no mention of the quality of the service. It will be further noted that the extra tolls now applied for are precisely those which the companies objected to when charged by the outsider.

Mr. Ham's letter of November 15, 1918, shows the return shipments from West St. John to be negligible.

The distance from the station to the ferry cannot be much over a quarter mile, and the ferry slip on the west side is contiguous to the ocean steamship berths. The primary factors in delimiting the boundaries of free cartage are distance and population, and both would, in the opinion of the Board, have entitled the best part of West St. John to free delivery were it not for the intervention of the ferry. The present tolls more than cover the ferriage, leaving what are no doubt frequent delays in making the ferry connection the only real disability.

The estimated cost of delivery shown in the exhibit since filed includes the portion of the service from the station to the ferry within the free area as well as that outside; but, of course, a comparison confined to the free area itself, where no cartage is collected, would, on its face, show more disastrous results.

The proposal figures 5 cents less per shipment of 100 pounds and its multiples than to the pay zone at Toronto, to which reference was made.

On November 22, 1913, Mr. Burr, Traffic Manager, Dominion Express Company, asked whether an amendment to the order increasing the toll could be arranged, and the Chief Traffic Officer of the Board replied as follows:—

“Board having required West St. John people to pay what were considered reasonable extra charges because of location disadvantages, it seems to me that extra remuneration demanded by carters should be absorbed by express companies who have been relieved of furnishing free service.”

The matter was not pressed then, and the present application appears to be due mainly to the military traffic for the steamships. This traffic, if it is to continue, will soon be moving to St. John, but its discontinuance is probably at hand, and as it is understood that the express companies contemplate a new cartage scheme of general application in connection with their present application for increased revenue, the Board is of the opinion that the West St. John question might well wait.

Yours truly,

A. D. CARTWRIGHT,
Secretary, B.R.C.

Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 20

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Complaint Renfrew Machinery Company re Bills of Lading.

JUDGMENT.

File No. 6713.158.

The CHIEF COMMISSIONER:

Complaint is made by the Renfrew Machinery Company which calls into question the giving of bills of lading as between the company performing the initial inter-switching movement and the company enjoying the line haul.

The Renfrew Machinery Company has its regular warehouse situate on the Canadian Pacific Railway Company's siding. They point out that the regular method followed in the past has been that the Canadian Pacific Railway, on whose line the shipment therefor originates, would issue the bill of lading to destination and deliver the car to the Grand Trunk for furtherance. The Canadian Pacific Railway Company's agent now declines to issue bills of lading for cars in respect of which the Grand Trunk enjoys the line haul. As a result the Renfrew Machinery Company say they have to obtain the bill of lading at the junction point, some two miles distant, which is a matter of inconvenience to them.

The question has been taken up with the companies with a view of determining exactly what the general practice in the past has been. The Canadian Northern Railway Company advises that their universal practice is for the road-haul carrier to issue the bill of lading. The Canadian Pacific Railway Company, in answer to the specific complaint which gives rise to a consideration of the whole question, submit that the complainants' premises are located on a private siding owned by the Canadian Pacific Railway Company on which, as a matter of convenience, they are permitted to load their shipments destined to points on other lines, and that on traffic forwarded from Renfrew via the Grand Trunk the Canadian Pacific acts only as an interswitching carrier. The Canadian Pacific Railway Company also says that the practice universally followed in such cases is for the line haul carrier to issue the bill of lading, way-bill the traffic, and settle the switching charges with the interswitching carrier.

The company submits that the interswitching carrier is really only performing the service in lieu of cartage, and that it has never been regarded as the contracting carrier in regard to such shipments. The company further says that the bills of lading issued by its agent at Renfrew for traffic interswitched for Grand Trunk furtherance was done in error, and that as soon as the mistake was discovered it was rectified.

The Grand Trunk advises that it is almost the universal practice of Canadian lines for the carrier receiving the road haul to issue the receipt; that the switching carrier does not issue the bill of lading and assumes no responsibility in connection with traffic beyond the mere service of switching to the line receiving the road haul.

The Canadian Government Railway system also advises that the responsibility for issuing bills of lading should rest with the carrier which has the line haul. At the same time it raises the question as to the reasonableness of requiring a switching carrier to give the shipper a formal shipping receipt to indicate that the car has been loaded and delivered to the line-haul carrier at the point of interchange.

The Board of Trade of the city of Toronto has intervened, and it is the opinion of the Traffic Department of that board that on outbound traffic interswitched at the initial point, the line-haul carrier should issue the bill of lading; but the submission is also made that the shipper is entitled to a receipt or acknowledgment of some sort from the switching line for his property, and it is pointed out that this has been done in some cases, but that the practice in the latter regard is not uniform.

The services of the switching carrier at Renfrew is but small. Its remuneration is also small. It would appear entirely unreasonable to insist that the switching carrier on whose tracks the traffic originates should not only hand it over to another carrier, who will in such case receive the full benefit of the line haul, carrying as it does a much greater scale of remuneration, but at the same time become primarily responsible for any loss or damage that the goods may suffer in transit.

While undoubtedly the ultimate responsibility would be with the road-haul carrier, yet so far as the initial claim and the initial responsibility are concerned, the burden, nevertheless, would be placed upon the switching carrier if it were compelled to issue a through bill of lading.

On the other hand, shippers ought to have protection while the car is in the hands of the switching carrier. Unless, as a matter of arrangement between themselves, the companies provide for the issuance of bills of lading by the switching carrier and which, for the reasons already stated, the Board cannot order, I am of the opinion that two bills of lading are necessary, the switching carrier to sign bills of lading covering the switching movement for furtherance, and the line-haul carrier issuing a bill of lading to the shipper for the actual line movement.

If the movement is made under these regulations the switching carrier will incur the responsibility as to the movement on its rails, while the onus of the actual contract rests where it should, on the line carrier.

December 9, 1918.

Commissioners McLean and Boyce concurred.

ORDER No. 27916.

In the matter of the complaint of the Burlington Beach Commission, the town of Burlington, the township of Nelson, and the city of Hamilton, in the province of Ontario, against the reduction in train service by the Hamilton Radial Electric Railway Company, hereinafter called the "railway company," on its line of railway between the city of Hamilton and the town of Burlington, Ont., in violation of the terms of the agreement entered into between the town of Burlington and the railway company under the authority of a by-law passed by the said town.

File No. 27436.

TUESDAY, the 10th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Toronto, October 17, 1918, in the presence of counsel for the complainants and the railway company,

the evidence offered and what was alleged at the hearing; and upon reading the written submissions filed in support of the complaint and on behalf of the railway company; and its appearing that the proposed reduced train service is in violation of the said agreement,—

It is ordered: That the railway company be, and it is hereby, directed to carry out and perform the terms of said agreement by putting into force and effect forthwith the following train service, namely:—

To leave Burlington 6 a.m., 8 a.m., 10 a.m., 1 p.m., 5 p.m., and 7 p.m.

To leave Hamilton 7.10 a.m., 9.10 a.m., 11.10 a.m., 4.10 p.m., 6.10 p.m., and 11.10 p.m.

2. That the service provided at the hours named shall be adequate and suitable to accommodate all traffic offered for carriage upon the railway.

H. L. DRAYTON,
Chief Commissioner.

Complaint of the Burlington Beach Commission, the town of Burlington, and citizens of Hamilton, Burlington, and Burlington Beach against the train service of the Hamilton Radial Electrical Railway Company between Hamilton and Burlington Beach.

File No. 27436.

JUDGMENT.

The CHIEF COMMISSIONER:

Since Order No. 27916 was issued, requiring the Hamilton Radial Electric Railway Company to carry out and perform the terms of its agreement with the municipality of Burlington by putting into force and effect forthwith the train service therein referred to, and since the Board's reasons supporting this Order were forwarded to the parties, telegrams have been received from the Burlington Beach Commission and the municipalities of Hamilton and Burlington to the effect that the company has ceased operating.

At the time the municipalities' application was heard in Toronto on October 17, 1918, the position was made perfectly clear and understood by the municipalities. That position was that the Hamilton Radial Electrical Railway Company had a large floating debt, was still losing money, and was living on advances made by the Dominion Power and Transmission Company; and that, unless the company's rates were increased as applied for, the company would be bound to stop operation.

The hope was then expressed by the Board that the municipalities would get together and either make some arrangement with the company for an advance in the rates which, in view of municipal agreement, confirmed by Dominion Statute, the Board could not order, or that the municipalities would take over the property and operate it themselves.

The company's representatives expressed themselves as willing that this should be done. At the hearing the municipalities were advised that if they desired, notwithstanding the fact that the service was not a remunerative one and notwithstanding the fact that the company was financially embarrassed, as the company had entered into an agreement the Board would issue an Order requiring the agreement to be carried out and the service required to be supplied under it given.

Since the hearing representatives of the municipality of Burlington, who are very largely interested, came to Ottawa and requested that formal Order, as indicated, should issue.

The telegrams received request the Board to take action to enforce the order that has been made, and to require the company to continue its operations.

In view, not only of what happened at the hearing, but also of the information that the Burlington representatives obtained at Ottawa, it might be thought that no further explanation was necessary. It apparently is.

The Board's action in the present case is only taken, and can only be taken under the jurisdiction vested in it to enforce agreements. The Board's Order already issued defines the service that ought to be given under the agreement and directs that that service should be given. As explained to Burlington, a method in which the Board's Orders are enforced is covered by section 46 of the Railway Act, under which any party interested may make the Board's Order a judgment of the Exchequer Court or of any Superior Court in any of the provinces, when the Order becomes immediately enforceable as an Order of any of these courts.

In addition to this the company may be proceeded against under the provisions of section 427 providing for the collection of penalties.

The real difficulty is that in all probability, as already pointed out, owing to the financial position of the company and the fact that the operation of the railway is carried on at a loss, no relief will be obtained by the public who urgently require the continuation of the service.

This conclusion has already been pointed out. In order to have the service it was necessary for the municipalities in whose hands in this particular case the matter of rates rests instead of with the Board, so to adjust the rates that the losses which the company was suffering and which they endeavoured to be relieved of would disappear, or else that the municipalities get together, take over the system, and operate it themselves.

Unfortunately, this has not been done. There is nothing more that the Board can do, and it regrets that its efforts to bring the parties together have been unsuccessful.

As already pointed out, the Board's action is taken under the agreement. It may be noted that the provision in the agreement dealing with default provides that if the company neglects to run electric cars on the railway for the accommodation of the public, as provided by the by-law, etc., for the space of three successive months, the company shall then forfeit all privileges and rights which it may have acquired.

December 13, 1918.

Commissioners McLean and Boyce concurred.

GENERAL ORDER No. 258.

In the matter of rule 26 of the "General Train and Interlocking Rules" approved by Order of the Board No. 7563, dated July 12, 1909, providing that a blue flag by day and a blue light at night be displayed at one or both ends of an engine, car, or train for the protection of workmen engaged in, under, or around cars on regular repair tracks;

And in the matter of the question of requiring additional protection of workmen so engaged as contemplated by circular of the Board No. 150, dated January 29, 1917, and supplement No. 1 thereto, dated November 2, 1917, as well as supplement No. 2, dated March 17, 1913, to circular No. 98, copies of said circular and supplements having been served upon the railway companies subject to the jurisdiction of the Board with the request that said companies show cause why

the recommendations embodied in such circular and supplements should not be adopted and put in practice on their respective railways.

File No. 20847.

MONDAY, the 25th day of November, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the answers filed on behalf of the companies in response to said request, the reports of the Board's Inspectors' and the recommendation of its Chief Operating Officer,—

It is ordered, as follows:—

1. That all railway companies within the legislative authority of the Parliament of Canada, operating by steam, be, and they are hereby, directed to display the blue flag by day and the blue light by night, required by rule 26 of the "General Train and Interlocking Rules," at a height of five feet above rail level, on a steel frame secured to the rail; the day signal (flag) to be 22 by 28 inches in size, set at right angles to the track, and located between the switch and the first engine, car, or train occupying the track.

2. That all switches leading to regular repair tracks of every such railway company be locked with special locks and keys carried by the foreman in charge of the repair work, or other responsible party, whose duty it shall be to see that employees and workmen, so engaged, are warned and are clear from cars or engines before any switching movement is made on such track; and also that the switches are relocked after the switching movement is completed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27910.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," under section 29 of the Railway Act, for an Order amending the Order of the Board No. 27225, dated May 15, 1918, so as to provide for separate access for the Canadian Northern Railway Company and the applicant company to the elevators in Port Arthur shown on the plan approved under said Order.

File No. 26825.13.

TUESDAY, the 3rd day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, October 16, 1918, in the presence of counsel and representatives for the applicant company, counsel for the Canadian Northern Railway Company, and representatives for the city of Port Arthur and the Saskatchewan Co-Operative Elevator Company, Limited, the evidence offered and what was alleged; and upon reading the written representations

submitted on behalf of the James Richardson & Sons, Limited, and the particulars of the agreement reached between the applicant company and the Canadian Northern Railway Company, as set forth in a letter to the secretary of the Board from counsel of the Canadian Northern Railway Company, dated October 28, 1918; and upon the reports of the Chief Engineer and the Chief Operating Officer of the Board,—

It is ordered: That the applicant company and the Canadian Northern Railway Company be, and they are hereby, directed to construct interchange and storage tracks as shown in black and red respectively on the Canadian Northern Railway Company's plan, dated Winnipeg, December 6, 1917, as amended January 11, 1918; the tracks to the different elevator companies to be re-arranged and constructed as shown in red on the said plan; the cost to be divided as may be agreed between the said two companies; the two interchange tracks shown in black on the plan to be constructed and completed at once, the storage tracks as and when required; the applicant company to construct the tracks west of a line drawn through the centre of the Saskatchewan Co-Operative Elevator Company's plant and the Canadian Northern Railway Company to construct the tracks east of the said line, or as may be agreed upon between the said two companies; the applicant company to serve the James Richardson & Sons, Limited, and the Saskatchewan Co-Operative Elevator Company's elevators, and to discontinue the use of the spur to the United Grain Growers, Limited, elevator; the Canadian Northern Railway Company to serve the Saskatchewan Co-Operative Elevator Company and the United Grain Growers, Limited, elevators, and to discontinue the use of the spur to the James Richardson & Sons, Limited, elevator; the service to the elevators to be without additional charge against traffic.

2. That the cars of one company set out for placing by the switching service of the other shall not be discriminated against, but shall be lifted and placed, having regard to their priority on the stand-out tracks.

3. That the Order of the Board No. 27225, dated May 15, 1918, be, and it is hereby rescinded.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 257.

In the matter of the application of the Canadian Northern Railway System for an Order to amend Rule No. 33 of the "General Train and Interlocking Rules," approved by Order No. 7563, dated July 12, 1909.

File No. 4135.

FRIDAY, the 6th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, urging the advantages of standardization for safe and efficient operation of railways; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That rule 33 of the said "General Train and Interlocking Rules" be struck out and the following substituted therefor:—

"33. Watchmen stationed at public road crossings must, by day, display a standard metal disc and, by night, a green light to warn pedestrians and persons in vehicles that a train is approaching. Red signals must be used by them only when necessary to stop trains."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27926.

In the matter of the application of the Canadian Northern Railway Company for an order extending the time within which it is required by the order of the Board No. 27696, dated September 16, 1918, to erect a third-class station building at Durban, Man.

File No. 13411.

MONDAY, the 9th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the residents and farmers in the vicinity of Durban, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the time within which the Canadian Northern Railway Company is required to erect a third-class station building at Durban, Man., be, and it is hereby, extended until the 15th day of June, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27946.

In the matter of the application of the Canadian Northern Railway Company, herein-after called the "applicant company," for authority to close its station at Moscow, in the province of Ontario.

File No. 4205-107.

WEDNESDAY, the 11th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, September 10, 1918, in the presence of counsel for the applicant company and counsel for and a representative of the municipality of Moscow, and what was alleged; and upon reading the written submissions filed on behalf of the applicant company,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further Order, to remove the regular agent at Moscow, Ont., subject to and upon the condition that a telephone be installed in the said station and a caretaker appointed to see that the station is kept clean and heated for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27923.

In the matter of the complaint of the Imperial Steel and Wire Company, Limited, complaining that the Grand Trunk and Canadian Pacific Railway Companies unjustly discriminate against Collingwood in favour of Toronto, Hamilton, and other points in their published rates on nail shipments to Vancouver wharf for export.

File No. 20291.1.

THURSDAY, the 12th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon reading the complaint, the written submissions filed on behalf of the respondent railway companies, and the report of the Chief Traffic Officer of the Board,—

It is declared that the rate and minimum weight lawfully applicable from Collingwood, Ont., to Vancouver wharf, British Columbia, by the all-rail route of the Grand Trunk and Canadian Pacific Railway Companies, from December 5, 1917, to October 31, 1918, on carload shipments of nails, in boxes or kegs, when destined to the foreign ports enumerated in the tariff, was the rate shown in Special Joint Export Freight Tariff, Grand Trunk Railway, C.R.C. No. E. 3677, as applicable from Toronto and Hamilton.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27924.

In the matter of the application of the municipal corporations of the cities of Kitchener and Guelph, and the towns of Waterloo and Barrie, and the Department of Lands, Forests and Mines for the Government of the province of Ontario, for an order fixing flat rates per cord or per carload, instead of by weight, upon shipments of firewood from Algonquin Park to municipalities and public institutions at cost.

File No. 27685.5.

THURSDAY, the 12th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and on behalf of the Grand Trunk Railway Company, and the report of the Chief Traffic Officer of the Board; and upon its appearing that the Board is without jurisdiction to make the order applied for,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27932.

In the matter of the application of the Pere Marquette Railway Company, under the amending Act 7-8 Edward VII, section 11, chapter 61, for approval of a by-law dated December 4, 1918, authorizing Clarence M. Booth, general freight agent, and William E. Wolfenden, general passenger agent of the company, to prepare and issue tariffs of freight and passenger tolls to be charged in respect of the lines of railway owned or operated by the company.

File No. 1026.

TUESDAY, the 17th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law be, and it is hereby, approved.*And it is further ordered:* That the Order of the Board No. 16382, dated April 25, 1912, made herein, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27942.

In the matter of the application of the Grand Trunk Railway Company of Canada, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open for the carriage of traffic its revised line of railway through the town of Campbellford, in the province of Ontario, from mileage 32.62 to mileage 34.06 from Cobourg wharf.

File 25047.

TUESDAY, the 17th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon the report and recommendation of the Assistant Chief Engineer of the Board, concurred in by its Chief Engineer, and the filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of traffic its revised line of railway through the town of Campbellford, in the province of Ontario, from mileage 32.62 to mileage 34.06 from Cobourg wharf.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27947.

In the matter of the complaint of the Rose Deer Coal Mining Company, Limited, against the lack of proper accommodation for the handling of way freight on the Canadian Northern Railway at Wayne, Alta.

File No. 28914.

FRIDAY, the 20th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the complaint and on behalf of the railway company, and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to install an industrial track and loading platform at Wayne, Alta., as shown in red on the plan, dated July, 1918, on file with the Board under file No. 28914; the work to be completed by the 15th day of July, 1919.

H. L. DRAYTON,
Chief Commissioner.

CIRCULAR No. 174.

Hand rails and small foot-rests on the outside of locomotives, and railing on tender to prevent men from slipping off when they are passing over the tender or when the locomotive is taking coal or water.

File No. 22223.

December 11, 1918.

I am directed by the Board to ask that you furnish, within 30 days of the date of this circular, a statement giving the number of engines equipped by your company in compliance with General Order of the Board No. 171, dated August 1, 1916, and the number still to be equipped.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. VIII

Ottawa, January 15, 1919

No. 21

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In the matter of proposed changes covered by the Board's Engineer, in connection with the diamond crossing, Kitchener and Waterloo Railway and the Grand Trunk Railway, at King street, Kitchener, and of moving derails and further protection apparatus.

File No. 113.

JUDGMENT.

Mr. COMMISSIONER BOYCE:

After an examination of the relative position of the derail with the diamond at the above crossing in connection with the recommendation of the Inspector of the Board, in his report of April 12, that the derails in the Kitchener and Waterloo Railway track be moved further out, has recommended certain alterations. The report of the engineer points out that the Kitchener and Waterloo Railway is a single track three diamond crossing of the Grand Trunk Railway which has three tracks across King street, main line and siding on each side. Both north and south derails are 65 feet and 36 feet respectively on the nearest Grand Trunk rail. In view of the grade on King street at this point, the engineer is of the opinion that these derails are too close to the Grand Trunk Railway tracks for their safe operation and suggests that the north derail be moved to a point 100 feet and the south derail to a point 75 feet from the nearest Grand Trunk rail. It is also recommended that a cluster of lights be placed over each derail with a red light in the centre of the cluster which would indicate the movement of the derail against the Kitchener and Waterloo Railway.

The report having been communicated to both parties no serious objection is offered to the proposed alterations, but each party contends that the cost of the changes should be borne by the other. The report of the engineer is, therefore, adopted and the changes will be made as recommended.

It is necessary for the Board to determine the question of the cost of the work, and to do so reference must be made to the history of the crossing in order to ascertain where that cost should be placed.

The application for the crossing was originally made by the Berlin and Waterloo Street Railway Company (then a private corporation) to the Railway Committee of the Privy Council, for approval of the place and mode of crossing by their railway of the Grand Trunk Railway on King street in the town of Berlin, Ont., as shown on plan and profile submitted. At the time of such application the street railway was, undoubtedly, junior to the Grand Trunk Railway. On 10th October, 1895, an Order

was made on such application approving of the place and mode of crossing of the said railways as indicated on the plan, on the following conditions:—

“A substantial diamond crossing to be laid in at the said point of intersection of the two railways.”

“Derails to be inserted in the track of the Berlin and Waterloo Street Railway on each side of the Grand Trunk Railway—interlocked with home signals on the Grand Trunk Railway track—the derails always to be open except when the home signals on the Grand Trunk Railway are set against Grand Trunk trains and engines.”

“The exact position of the derails and home signals and the description of the machinery so to be provided, and other necessary details, to be subject to the approval of the Government Engineer of Railways and Canals.”

“No electric car of the Berlin and Waterloo Street Railway Company, and no train or engine of the Grand Trunk Railway Company, within a distance of 400 feet in either direction from this crossing, to approach the same at a greater speed than six miles an hour.”

“The Berlin and Waterloo Street Railway Company to bear and pay the whole cost of providing and maintaining the said derails, diamond crossing and home signals, and their attachments so required, and the necessary oil, electric, or other light (including lamps); and any increased cost of operating the protective appliances at the said crossing that may be entailed in the future by the carrying out of this Order beyond the cost of protection at the said crossing prior to the use of this crossing by the electric cars of the said street railway company.”

No Order rescinding or varying the Order of the Railway Committee of the Privy Council, above referred to, has been made by this Board, nor do I find that anything has occurred which has disturbed or which would justify the disturbance of the ruling as to seniority of the railway company, and consequent onus upon the street railway company “to bear and pay the whole cost of providing and maintaining the said derails, diamond crossing and home signals and their attachments so required, and the necessary oil, electric, or other light (including lamps) and any increased cost of operating the protective appliances at the said crossing that may be entailed in the future,” as specified in the Order of the Railway Committee of the Privy Council above referred to.

That being the case, and having regard to the provisions of sections 32 and 33 of the Railway Act, the decision of the Court of Appeal in *C.P.R. vs. City of Toronto*, 7 C.R.C., 274, is applicable, so far, to the case.

It is contended on behalf of the street railway company that because the Berlin and Waterloo Street Railway Company, as it was originally called (the name was afterwards and recently changed to that of the Kitchener and Waterloo Street Railway Company) ceased to exist on May 1, 1907, and from that day, and afterwards, became the property of the present street railway company, seniority should rest with the street railway company when owned and operated by the city; the contention being that as King street was senior to the Grand Trunk Railway, that the railway operated upon King street, when it became the property of the same municipal government that owned King street, was also senior to the railway company. That is to say, that the street railway originally junior to the Grand Trunk acquired seniority simply by the accident of transmission of its ownership to the municipality which owned the street crossing the steam railway at that point. As I understand it, seniority does not depend upon ownership of the land on which the railway is built, but it rests upon construction, which means, that the ruling as to seniority, as between street railway and Grand Trunk, as originally made by the Railway Committee of the Privy Council, and is now admitted without dispute, finally settled the question of seniority and

juniority as between the two railways, and that no subsequent transmission could alter the application of the senior and junior rule as decided. To this effect is the decision in *Canadian Northern Railway vs. C. P. Ry.*, 7 C.R.C., 297.

The matter was discussed before the Board at a sittings in Toronto, 10th November, 1908 (*vide*, vol. 69, p. 8889), in the form of an application by the Grand Trunk Railway Company, for an Order that the street railway company bear any increased cost of operating the protective appliances at this crossing entailed by the carrying of the Order of the Railway Committee of the Privy Council of 10th October, 1895, beyond the cost of protection at the said crossing, prior to the use of the crossing by the electric cars of the said street railway company, and while the point now involved was not in issue there, some extracts with reference to the effect of the Order of the Railway Committee of the Privy Council, above referred to, may here be usefully quoted. (P. 8896, referring to Order, October 10, 1895):—

“Hon. Mr. MABEE: The Committee ordered your company, Mr. Skellen, to pay the expense of the derail, home semaphores and their attachment, and that you should also pay any increased cost of operating the protective appliances of the said crossing that may be entailed in the future by the carrying out of this Order, beyond the \$1.25 a day?”

“Mr. SKELLEN: No, not beyond the \$1.25.

“Hon. Mr. MABEE: Beyond what they had been paying?”

“Mr. SKELLEN: I do not think the intent of that Order is that if the Grand Trunk increased the danger, and necessitated on their part the further payment of another watchman, that we should have to pay for that. They recognized in that Order—

“Hon. Mr. MABEE: That principle would never do. You go over there as an act of grace. It is not as a right. The Committee let you over. They laid down the conditions on which you should cross. They say that if in the future this needs increased protection, you shall pay it. The steam road was on the ground first. They own the right of way, and you ask to cross, and the Committee lets you cross upon that understanding. Surely that is the position of it.”

* * * * *

“Hon. Mr. MABEE: Granting the Grand Trunk is making more movements than in 1905, that is just what the committee anticipated, and they said that if in the future the danger increased the electric railway should pay for the increased protection.”

“Mr. COWAN: You had the benefit of all the expense.

“Mr. SKELLEN: If there was no street railway the Grand Trunk would have to have two watchmen to operate those two gates. We have not caused that, and we should only be made to pay for what we have forced them to do. Supposing there was no street railway there to-day at all—

“Hon. Mr. MABEE: That argument should have been addressed to the Railway Committee of the Privy Council that made this Order. If you had been there at that time perhaps you would have prevailed upon them.

“Mr. SKELLEN: It is not too late to remedy a wrong.

“Hon. Mr. MABEE: I do not know that it is a wrong. That is the view they took of it, and why should we, thirteen years afterwards, say they should not have done it?

(P. 8899):—

“Hon. Mr. MABEE: How do you propose we should get away from the Order the Privy Council made in 1895? Why should we depart from the Order of the Railway Committee in 1895?

“Mr. BREITHRUPT: I want to read the Order in the first place, and the part that relates to the particular appliances: “Any increased cost of operating

the protective appliances of the said crossing that may be entailed in the future by the carrying out of this order"—that evidently refers to appliances which we were to place and which we placed."

"Hon. Mr. MABEE: Is it fair to read it in that limited way? It is protective appliances arising by reason of the carrying out of that Order—that is, by reason of them carrying you across the Grand Trunk.

At page 8901 and page 8902 the effect of the Order of the Privy Council is further dealt with in the following quotations:—

"Hon. Mr. MABEE: Under this Order you had to pay the whole cost of operating these derails and signals.

"Mr. BREITHRUPT: The additional cost.

"Hon. Mr. MABEE: The whole cost.

"Mr. BREITHRUPT: I took the order to mean we were to pay the additional cost.

"Hon. Mr. MABEE: The Berlin and Waterloo Street Railway Company to bear and pay the whole cost of providing and maintaining the said derails, diamond crossings and home signals".

"Mr. BREITHRUPT: That means repairing. The operating is mentioned later.

"Hon. Mr. MABEE: And their attachments, and the necessary oil and other light, including lamps, and any increased cost of operating the protective appliances at the said crossing that may be entailed in the future. Do you mean to say you did not have, under that Order, to pay the cost of operating it? What would be the use of this Order? It means to maintain them in working order.

"Mr. BREITHRUPT: That means repairs.

"Hon. Mr. MABEE: The Order deals with any increased cost that may be entailed in the future by reason of carrying out this Order."

From the above extracts it seems reasonably clear that not only did this Board, after it came into existence, not in any way vary the judgment of the Railway Committee of the Privy Council, as contained in Order 10th October, 1895, but although it possesses the statutory power to change it under sections 32 and 33 of the Railway Act, it affirmed it as regards the costs of maintaining and repairing the appliances applied for by that Order.

The decisions of this Board, affirmed by the Supreme Court of Canada, in so far as they effect this case, of the *City of Edmonton v. G. T. P. and Canadian Northern*, 15 C.R.C., 443, *Grand Trunk Pacific Railway Co. v. City of Edmonton*, 15 C.R.C., 445 and *Edmonton Street Railway Company v. G. T. P. Railway Co.*, 14 C.R.C., 93, are not to be lost sight of. If those decisions are applicable, the taking over by the municipality on 1st May, 1907, of the theretofore privately owned and operated street railway company would lead to the conclusion that, by such acquisition, the municipality obtained, apart from its acquisition of the street railway as regards the King street crossing over the G.T.R. a seniority which it did not possess on October 10, 1895, when the original Order as to maintenance and the crossing was made; but an examination of the facts, I think, clearly distinguishes the decisions above referred to as applicable to the present case.

In the *Edmonton Case*, 15 C.R.C., 443, the city of Edmonton when it applied to the Board for permission to make the crossing, owned and operated the electric railway and the judgement of the Chief Commissioner apportioning the cost expressly states, on page 444: "If this were not an electric railway owned and operated by the city, the rule would be that the junior company should bear the cost"; and the facts are the same in the *Edmonton Case*, 14 C.R.C., 93. In this case the application was made

by the street railway company to the Railway Committee of the Privy Council for the crossing at King street, in the city of Berlin (as it then was) at a time when the street railway was independent of the municipality and was a separate corporate entity owning and operating the street railway, and the Order made by the Railway Committee of the Privy Council, October 10, 1895, was with reference to the installation and maintenance of the protective apparatus of the street railway, not municipally owned and was an adjudication, in so far as the installation and maintenance of that apparatus was concerned, as between the privately-owned street railway and the Grand Trunk Railway Company, based upon the question of seniority and juniority at the date of the application. The Order made was binding upon the street railway, was acted upon and carried out by the privately owned railway, and, when the city took over the street railway in 1907, twelve years afterwards, there appears to have been no adjustment or change with regard to the apparatus of that railway on the King street crossing. The city took over the privately-owned street railway on May 1, 1907, *cum onere* as regards the Order of the Railway Committee of the Privy Council of 10th October, 1895. That situation is substantially affirmed by what took place at the Board's sittings in Toronto, November 10, 1908, heretofore referred to, that is, a year after the acquisition by the city of the interest of the street railway, and in the concluding words of the then Chief Commissioner at that hearing:—

“The Order (that is the Order of 10th October, 1895, of the Railway Committee of the Privy Council) deals with any increased costs that may be entailed in the future by reason of carrying out of this Order.”

What is now asked is not a reversal of the Order, but a necessary change in the maintenance of the same apparatus established under the Order of 1895. I do not think that anything contained in the Edmonton Street Railway Case above referred to infringes upon the doctrine that the terms that were imposed upon the railway company in 1895, have not been abrogated or dispensed with since 1907 by reason of the fact that the municipality then took over that railway as it stood and, I think necessarily, subject to the terms of the Order of 1895. The changes are limited to changes in the apparatus, that is, maintenance, which are fully provided for by that Order. These changes in the apparatus provided by the old Order become necessary in consequence of the two additional tracks put in by the G.T.R. which are referred to in the next succeeding paragraph, and which I think it is clear were properly there.

It is also to be mentioned that by Order No. 11888, dated 7th October, 1910, upon the application of the corporation of the town, the applicant was granted leave to move, at its own expense, the track of the Berlin and Waterloo Street Railway Company where it crossed the main line track of the Grand Trunk Railway Company, at King street in the said city.

I am of the opinion, in consequence, that the decision of the Board in a number of cases, that where seniority is declared that seniority is not lightly to be disturbed and that the railway that is senior is generally, if not always, senior, and that the St. Hyacinthe case cited above is authority that subsequent tracks laid down on that right of way ought also to be considered senior to any crossing tracks although prior in date of construction to the subsequent tracks, on the senior right of way.

An Order should go that the work recommended by the Board's Engineer, to be performed by the street railway company, within thirty days from the date of the Order, and that the expense of same shall be borne by the street railway company.

OTTAWA, December 30, 1918.

MR. COMMISSIONER McLEAN:

Under the Order of the Privy Council, the obligation on the street railway was a continuing one involving “any increased cost of operating the protective appliances at the said crossing that may be entailed in the future by the carrying out of this

Order” This carried with it, in respect of the situation with which the Privy Council dealt, a liability in respect of any rearrangement found necessary by the proper authority.

Under the Order of the Privy Council, the derails on the street car tracks were directed to be placed 65 feet from the nearest rail on the north side and 36 feet on the south. Existing practice is not satisfied with such short distance. The Board's Engineer advises that if he were dealing with the present situation on an original application involving the crossing of one Grand Trunk track alone his recommendation as to greater distances for the derail location would be the same as he has given. Further, he advises that on account of the existing grade the relocation of the derails as recommended by him is a proper one, irrespective of the two additional Grand Trunk tracks which have been referred to in the correspondence.

I agree that the burden of the rearrangement, and the costs incident thereto, fall on the street railway.

January 7, 1919.

ORDER No. 27950.

In the matter of the application of the Canadian Pacific Railway Company for an order amending the order of the Board No. 25980, dated March 30, 1917, by striking out clause 3 of the order.

File No. 6713.30.

TUESDAY, the 24th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is alleged in support of the application and on behalf of the Canadian Northern and Grand Trunk Railway Companies, and the report and recommendation of the Chief Traffic Officer of the Board; and upon its appearing that clause 3 of said Order No. 25980 conflicts with clause 14 of the General Interswitching Order No. 252, dated October 26, 1918,—

It is ordered: That the said order of the Board No. 25980, dated March 30, 1917, be, and it is hereby, amended by striking out clause 3 thereof; this amending order to become operative on the first day of January, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27951.

In the matter of the application of the Canadian Pacific Railway Company, on behalf of the Lake Erie and Northern Railway Company, for an order amending the Order of the Board No. 25570, dated October 27, 1916, by striking out clause 2 of the order.

File No. 6713.120.

TUESDAY, the 24th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what is alleged in support of the application and on behalf of the Grand Trunk and the Toronto, Hamilton and Buffalo Railway Companies, and the

report and recommendation of the Chief Traffic Officer of the Board; and upon its appearing that clause 2 of said Order No. 25570 conflicts with clause 14 of the General Interswitching Order No. 252, dated October 26, 1918,—

It is ordered: That the said order of the Board No. 25570, dated October 27, 1916, be, and it is hereby, amended by striking out clause 2 thereof; this amending order to become operative on the first day of January, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27952.

In the matter of the application of the Canadian Pacific Railway Company for an order rescinding the order of the Board No. 26887, dated January 3, 1918.

File No. 6713.63.

TUESDAY, the 24th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon reading what is alleged in support of the application and on behalf of the Grand Trunk Railway Company, and the report and recommendation of the Chief Traffic Officer of the Board; and upon its appearing that said Order No. 26887 conflicts with clause 14 of the General Interswitching Order No. 252, dated October 26, 1918,—

It is ordered: That the said order of the Board No. 26887, dated January 3, 1918, be, and it is hereby, rescinded; this rescinding order to become operative on the first day of January, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 27953.

In the matter of the application of the Canadian Pacific Railway Company for an order amending the order of the Board No. 27128, dated April 17, 1918, by striking out clause 2 of the order.

File No. 6713.88.

TUESDAY, the 24th day of December, A.D. 1918.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon reading what is alleged in support of the application and on behalf of the Grand Trunk Railway Company, and the report and recommendation of the Chief Traffic Officer of the Board; and upon its appearing that clause 2 of said Order No. 27128 conflicts with clause 14 of the General Interswitching Order No. 252, dated October 26, 1918,—

It is ordered: That the said order of the Board No. 27128, dated April 17, 1918, be, and it is hereby amended by striking out clause 2 thereof; this amending order to become operative on the first day of January, 1919.

H. L. DRAYTON,
Chief Commissioner.

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The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 22

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In the matter of the War Measures Act, 1914; and the Orders in Council P.C. No. 1863, dated July 27, 1918, and P.C. No. 2080, dated August 24, 1918.

File 28678.8.

REPORT.

THE CHIEF COMMISSIONER:—

A report is required by the Cabinet having regard to protests made against the new sugar rates. Protests have been made by the Dominion Sugar Company, Limited, of Wallaceburg, Chatham, and Kitchener; the Canada Sugar Refining Company, Limited, of Montreal; and the Atlantic Sugar Refineries, Limited, of St. John.

The letter from the Dominion Sugar Company, addressed to myself, reads as follows:—

CHATHAM, Ont., September 4, 1918.

"We are in receipt of Order in Council, P.C., 2080 passed on August 24.

"We were very much surprised and disappointed at the decision rendered therein, and hereby respectfully petition your board to accord us a hearing upon this subject at as early a date as is possible and convenient for you.

"By reducing the rates to the Atlantic seaboard refiners, the western part of Ontario is left open for competition by all eastern refiners. The eastern portion of Ontario gives practically a monopoly to the Montreal refiners, and in fact when considering the raw sugar freight rate favours the Atlantic seaboard refiners. For instance, the freight rate to Ottawa is as follows: We have simply added the raw sugar freight rate in each case, not allowing for the equivalent granulated loss.

From Halifax 38½ plus 15 raw sugar freight..	53½
" St. John 37½ plus 15 raw sugar freight..	52½
" Montreal 23 plus 21½ raw sugar freight..	44½
" Chatham 42 plus 27 raw sugar freight..	50
" To Kingston is as follows:—	
From Halifax 43 plus 15 raw sugar freight..	58
" St. John 42 plus 15 raw sugar freight..	57
" Montreal 27½ plus 21½ raw sugar freight..	49
" Chatham 37½ plus 27 raw sugar freight..	64½

"You can readily see, therefore, that our refinery will be subject to keen competition to all parts of Ontario by all refiners. On the other hand we are shut out entirely of the province of Quebec, including Montreal (the largest consuming city in Canada) and the Maritime Provinces.

"The freight rate to Montreal is as follows:—

From Halifax 33 plus 15 raw sugar freight.. . . .	48
Mileage 758.	
" St. John 32 plus 15 raw sugar freight.. . . .	47
Mileage 487.	
" Montreal 21½ raw sugar freight.. . . .	21½
Mileage	
" Chatham 43 plus 27 raw sugar freight.. . . .	70
mileage 514.	

"While to Toronto, Montreal is on a parity with ourselves, and the Atlantic seaboard refiners pay only a few cents higher, leaving open to them all of these markets.

"The rate of freight Chatham to St. John, N.B., is 87½ cents, while the rate of freight St. John to Chatham is only 72½ cents. For the past few years 20 to 25 per cent of our sugars have been sold in the province of Quebec and the Maritime Provinces. We have secured a regular trade in this territory. This trade increased considerably with the erection of the refinery at St. John, N.B., for the reason that on account of the Canadian refining capacity being greater than actual consumption previous to the erection of the Atlantic refinery, competition became very keen, particularly in Western Ontario, forcing us to seek eastern markets.

"By looking over our geographical location you will note that we are practically at the extreme southwestern portion of Ontario. Our raw sugars are shipped west to us from New York at the highest raw sugar freight rate paid by any Canadian refiner, viz., 27 cents which is equivalent to refined sugar freight rate of 28½ cents. The majority of our refined sugar is then returned east.

"In perusing carefully your arguments for reduced rates to the seaboard refineries, our attention has been called to a few points which we would like to emphasize. The Atlantic refineries for the past few years have accrued a large amount of export business due to their geographical location. This export business, of course, is denied to us owing to our geographical location, although we have had one large refinery at Chatham with a capacity of 750,000 pounds daily lying idle for the past two years, and our Wallaceburg refinery has been operating only one-half time. The reason of our short capacity at Wallaceburg is principally due to the fact that on account of the export business obtained by the Atlantic refineries in past years, they secured their allocations of raw sugar from the International Sugar Committee, based on both their domestic and export business. They, of course, cannot now export sugars owing to the tonnage situation, and these extra sugars are being sold principally in our Ontario market.

"On page 20 of the Order in Council you make mention of the Beet Sugar industry, stating that you consider 33¼ per cent would be a fair average of the local production. Up to the present time the ratio has only been 25 per cent, but given fair weather we may expect a larger amount for the coming campaign. We wish to call your attention to the fact that there has been two advances of our freight rates on the beet roots. First, a 15 per cent and then a 25 per cent increase. Our average freight rate previously was 80 cents per ton. These two increases make our freight rate now \$1.15 a ton, which is equivalent to a raw sugar freight rate of 55 cents per 100 pounds. The increase in freight rates alone this year, viz., 25 cents per ton on sugar beets, gives an equivalent raw sugar freight rate increase of 16½ cents per 100 pounds. This is much heavier than the imported raw sugar freight increase. It might be argued that

on account of the high price of sugar the beet industry could readily absorb this extra freight. We, however, know of no Canadian industry where the extra expense due to war conditions have been greater than ours. We are paying to the farmers over twice as much for beets. Materials entering into the manufacture of sugar in some instances have increased as high as 600 per cent the past year, so that while in the first few years after the outbreak of the war conditions could be considered as favourable, we are quite within bounds to state that at present the Beet Sugar Industry deserves and requires all encouragement possible.

"We are now working on comparisons of freight rates, which indicate clearly a direct discrimination against this company in favour particularly of the Atlantic seaboard refineries, and we hope to hear from you by return stating the date that we can appear before you with a view to securing redress in this matter."

The gist of the complaint is that the rate basis helps the Atlantic sugar refineries and enables that refinery to transport its products into intermediate territories at rates lower than the Dominion Sugar Company can export it for similar mileages.

This is the undoubted fact and was made perfectly clear in my report to council.

The company followed up its protest by a visit from its executive officers, when the matter was discussed. In view of the abnormal conditions of to-day, the company has withdrawn its protest, but on the clear understanding that the protest may be renewed without the slightest prejudice by the action which the company has voluntarily taken in case of war conditions as specially affecting a competitor, and on the basis that the present Order is merely a temporary one made in view of those emergencies. As a result, no action need be taken one way or the other for the present on this complaint.

The complaint of the Canada Sugar Refining Company, Limited, was sent direct to members of the Cabinet. The letter of complaint is as follows:—

MONTREAL, September 6, 1918.

"I am enclosing you three tables which give the gist of the results of the Judgment in regard to rates.

"You will see that these are comparisons of how the new rates effect the refiners situated at the various points mentioned.

"Taking No. 1.—You can see there can be no possible defence of the fact that it will cost St. John 10 cents per hundred less to send sugar to Montreal than it costs us to send sugar to St. John, and I may say that we ship a considerable quantity east of Montreal.

"Table No. 2 shows the cost of landing sugar at all points west of Montreal where about seventy-five per cent of our output is sold.

"You will see that I have included in our cost of getting sugar to these points the present rate on raw sugar from St. John to Montreal, that is to say, taking Toronto as an instance and supposing a steamer arrived in St. John and we got half the cargo and the St. John Refinery the other half, it would cost us 50 cents to get it into Toronto while it would cost St. John only 45 cents. The rate on raw sugar should really be less than the rate on refined, as it is more bulky by about 5 per cent. If we get our sugar via New York it adds 2½ cents more to the handicap that we suffer from.

"What possible reason can there be for handicapping Montreal in this way? The case of the Dominion Sugar Refinery at Chatham, Ontario, as compared with St. John, shows practically the same discrimination in favour of the Maritime Refinery; no doubt they will get out their own figures, as I understand they are very indignant about the matter.

"The third comparison shows the position of Montreal and Vancouver, that is to say, of the East vs. the West under the three rates, and how the same principle of discrimination in favour of the Refinery there has been adopted by the Council. You understand there are two separate questions involved, the East vs. the West and the Maritime Provinces vs. Ontario and Quebec.

"A comparison of the old rates shows that there has always been some discrimination against Montreal, which was rectified by the adoption of the fifth-class rates, and again put in force under the rates as settled by the last Order.

"The situation developed in this way; When the general 25 per cent increase (so-called) in rates was given to the Railroads, sugar was taken out of the Commodity Class and put into the fifth-class, under which the rates would have been as shown on the tables; later there was a hearing in Ottawa (on the 14th August), at which all interests were present, and the final result was the complete upsetting of the fifth-class rate basis which had been adopted.

"I will take the first opportunity of showing you the evidence in the case, which is extremely interesting, and I think bears out every word that I have said about it.

"I have spoken to Mr. Ballantyne briefly regarding it, so when he returns he should know about it, and I have asked the Dominion Sugar representative, Mr. Houson, to speak to one of his Ontario ministers.

"I am profoundly dissatisfied with the present position of affairs."

COMPARISON OF MONTREAL AND ST. JOHN REFINER'S RATES.

Old.	To Montreal and St. John. Montreal to St. John. 5th class.	As settled.
	42	
20½		42
Old.	St. John to Montreal. 5th class.	As settled.
	42	
20½		32

COMPARISON OF RATES ON SUGAR OF EASTERN REFINERS.—LANDED ST. JOHN TO POINTS BELOW.

	Old Rates.		5th Class Rates.		As Settled.	
	Montreal.	St. John.	Montreal.	St. John.	Montreal.	St. John.
Toronto.. . . .	\$0 31	\$0 30	\$0 50	\$0 50½	\$0 50	\$0 45½
Hamilton	0 32	0 31	0 51½	0 52	0 51½	0 47
Winnipeg.	0 79	0 77½	1 06	1 03½	1 06	1 01½
Brandon.. . . .	0 93	0 91½	1 21	1 18½	1 21	1 16½
Regina	1 10½	1 09	1 40	1 37½	1 40	1 35½

NOTE.—"Montreal" includes in old rate 12½ cents in raw sugar and in 5th class and "As settled" 19 cents St. John to Montreal. Halifax rates—1 cent over St. John.

COMPARISON OF MONTREAL AND VANCOUVER RATES.

	Old Rates.		5th Class Rates.		As Settled.	
	Montreal.	Vancouver.	Montreal.	Vancouver.	Montreal.	Vancouver.
Winnipeg.	\$0 66½	\$0 89½	\$0 87	\$1 59	\$0 87	\$1 33½
Brandon.. . . .	0 80½	0 86½	1 02	1 59	1 02	1 33½
Regina	0 98	0 86½	1 21	1 44	1 21	1 21
Swift Current . . .	1 10½	0 86½	1 34½	1 32½	1 34½	1 18(?)

NOTE.—Under old system rates "met" at Portage la Prairie, 1,467 miles from Montreal.

Under 5th class rates "met" at Swift Current, 1,921 miles from Montreal.

As settled rates "met" at Regina, 1,769 miles from Montreal.

From head of lakes, rail rates "met" at Bassano, 2,166 miles from Montreal.

This complaint has been followed up by the following letter, also addressed to members of the Cabinet:—

MONTREAL, October 3, 1918.

"On the 24th of August, 1918, His Excellency the Governor General in Council having considered a report of the Chairman of the Board of Railway Commissioners for Canada upon certain complaints, having particular regard to the spread in the railway freight rates on sugar as fixed by Order in Council, July 27, 1918, recommended and ordered that the rates referred to in his report by the Chief Commissioner should be adopted and come into effect from St. John and Halifax on the 12th of September, 1918; from Vancouver, September 23, 1918; and shall remain in force for the duration of the present war or until further ordered.

"I, as President of the Canada Sugar Refining Company, Limited, consider it my duty to my shareholders, our employees, and the public to protest, in the only way that is open to me at this moment, to you, as one of the ministers representing the district in which our investment is made, and to protest in the most earnest manner against the injustice permitted by the Government in accepting the Commissioner's recommendation with regard to this matter. It is not my intention at this time to enter into a discussion of the merits, but I desire to protest against the injustice and to reply on the fact that this is not, even by the Commissioner himself, alleged to be a permanent matter, but, as he says on page 18 of his report, is a result of war troubles and war expenditure, and on page 20, that it has to do with war conditions, and he recommends, as a temporary measure of fairness, the rates referred to.

"I would call your attention to the fact, notwithstanding this statement, that the Food Controller has, in allocating the raw sugar supply, guaranteed to all of the eastern refiners equal treatment without it being necessary that an injustice should be perpetrated, as has been done by the judgment rendered herein.

"I quite understand that at this time it is the duty of all right-minded citizens to do everything they can, as I have done, to assist and sustain the Government, but I cannot, in view of its importance to those whom I represent, accept the ruling referred to without protest against its great injustice, and in the hope that in the near future the wrong done to my shareholders and employees by this Order in Council may be remedied."

A large proportion of the raw sugars going into St. John, owing to vessel shortage, have to be obtained in the New York market or on ocean rates materially higher than to New York. This proportion is larger than it formerly was owing to shortage of vessel bottoms. In the same way raw sugars are largely purchased by the Montreal and Chatham refineries in the New York market. I think the fact is that that is where practically all their raw cane sugars are purchased by them.

The St. John costs over New York for raw sugars, although differing in degree, are just as real as the Montreal costs; and the St. John additional costs which have arisen as a result of the war are referred to in my former report.

As a matter of fact, war rates on raw sugars bear more heavily on St. John than the report would indicate. Not only has the boat rate from New York to St. John materially increased, but, owing to boat shortage, raw sugars have moved to St. John from New York at a 26-cent rate as against the New York rail rate to Montreal of 21½ cents.

The reduction recommended, and which has been acted upon by the Cabinet, merely recognizes, in part, the added costs peculiar to refineries on the sea front.

The tables prepared by the Canada Sugar Refining Company make no allowance whatever for the abnormal rate costs that the St. John refineries are subjected to. While the rates ex Montreal quoted by the Canada Sugar Refining Company include not only the rates on the refined but also the raw sugar, and their case, therefore, is

made on a combination of both rates, no allowance whatever is made for the St. John extra costs on raw sugars over the governing market, New York. In other words, the cost to the Atlantic Refineries is taken on pre-war practices and on the assumption that all the Atlantic Sugar Refineries' raw sugars were delivered to them at a rate which would be equal to the deliveries to Montreal less the rate from St. John to Montreal. This is not the situation to-day, nor was it even during normal conditions, as, under normal conditions, St. John paid a higher rate on a percentage of its raw sugars than New York did, at which point the Montreal Refineries bought their supply.

Over and above this, the second table is incorrect in its quotation of the rates St. John to Toronto and Hamilton. They are quoted at 45½ and 47 cents respectively. The rates are 47½ cents and 49 cents. The rates Montreal to Toronto and Hamilton are also incorrect if the intention was as expressed, to add 19 cents for raw sugar rate to the regular rate. If Montreal's cost of raw sugars is to be considered at the present time, in all fairness St. John should also be considered, and considering them, Montreal to-day is in a better condition as against St. John, even under the present Order, than under normal conditions.

If amended so as to treat the Montreal rates as the St. John rates have been treated, that is, eliminating the freight rates on the raw material, the table submitted should be recast as follows:

	Old Rates.		5th Class Rates.		As Settled.	
	Montreal.	St. John.	Montreal.	St. John.	Montreal.	St. John.
Toronto	\$0 18½	\$0 30	\$0 33	\$0 50½	\$0 33	\$0 47½
Hamilton	0 19½	0 31	0 34½	0 52	0 34½	0 49
Winnipeg. . . .	0 66½	0 77½	0 87	1 03½	0 87	1 01½
Brandon. . . .	0 80½	0 91½	1 02	1 18½	1 02	1 16½
Regina	0 98	1 09	1 21	1 37½	1 21	1 35½

St. John's raw sugar costs over New York vary from time to time, depending upon the amount of direct packet service the company can get. This packet service is at New York's prices. The evidence taken shows that 25 per cent of the raw sugars are thus obtained, and if ordinary freighters are available, the boat rate from New York again varying, but being stated as 20 cents over New York to the extent obtainable, again brings down St. John's cost on raw sugars.

Changing as these costs do, I have not attempted, and do not attempt, definitely to fix the added cost that St. John suffers from as compared with New York as the result of war conditions. Undoubtedly, however, the burden is heavy, and I am still of the view that the arbitrary allowance of 10 cents accorded St. John off the rate is reasonable, more particularly because no one really is hurt.

As pointed out in the former report, the Canada Sugar Refineries, and they should be given full credit for the fact, are selling their sugar at five cents a hundred less than the other refineries; but, although they are underselling the other refineries, they cannot sell one pound of sugar more than if they sold at the same price. As pointed out, there is an actual shortage of all sugars. No matter what the rate of to-day is, the business of the different companies will be just the same; they will sell no more.

It is of course true that Montreal and the Dominion Sugar Company have been placed at a disadvantage in the Maritime Provinces, but selling as they can all their output, as I see it, no immediate injury is done.

On the other hand, at the present time the country itself suffers from abnormal difficulties brought on by the war. We have a shortage of railway materials, of coal, and sometimes of men. It is certainly not in the public interest that, under present conditions, raw sugars should be hauled from New York, refined in Montreal, and reshipped to the Atlantic coast when the Atlantic refineries are much more than able to look after the whole of the demands of the Maritime Provinces.

I am equally free to admit, as pointed out in the report, that the arrangement made has no regard to the regular rate, but is an arrangement which should cease

just as soon as the movement of raw sugars becomes normal. As I see it, Montreal and Wallaceburg at the present are not really hurt, although in certain districts their trade may and probably will be somewhat interfered with; but it is interesting to note that it was freely admitted, as pointed out in the main report, that freight rates had nothing whatever to do with the deliveries of sugar, and that the public were really not interested in the rates.

The second part of the complaint has reference to rates on sugar from Montreal west as compared with rates Vancouver east. It points out that the rates of the rival refineries formerly met at Portage la Prairie, but as a result of the settlement that was made on the report to Council, now meet at Regina.

The resultant gain to the Montreal Refineries in western competitive territory is 302 miles. The desire of the complainants is that the rate should either be fixed at the breaking point of the all-rail rates, Fort William west and Vancouver east, which would make Bassano, Alta., the breaking point, or on the rail-lake and rail movement, in which instance the rates, as pointed out in the complaint, would break at Swift Current.

The position of the complaining Montreal Refinery to-day in the western consuming centres is much better than it was before the Order in Council was made. A reference to the company's own table No. 3, illustrating the rate situation at the points that it has selected in support of its case, makes this plain.

The old Winnipeg rate from Montreal has been raised by 20½ cents or 30 per cent, as against an increase in the Vancouver-Winnipeg rate of 44 cents or 49 per cent. To Brandon the old Montreal rate has increased 21½ cents or 26 per cent, while the old Vancouver rate has increased 47 cents or 54 per cent. To Regina the old Montreal rate has increased 23 cents or 23½ per cent, as against an increase on the Vancouver rate of 34½ cents or 39 per cent.

In the case of Swift Current, the only remaining rate quoted by the complainant, the increase from Montreal is 24 cents or 21 per cent and from Vancouver 31½ cents or 36 per cent. The result is, taking these four points the company selects as illustrative, the actual rate increases placed on Montreal run from 20½ cents to 24 cents and in percentages from 21 per cent to 30 per cent, while the actual rate increases from Vancouver run from 31½ cents to 47 cents and in percentages from 36 per cent to 54 per cent.

In order properly to consider the complaint, consideration of relative distances to the typical points involved becomes necessary. They are given in the following table, in miles:—

To	From Fort William.	From Montreal.	From Vancouver.
Winnipeg..	419·3	1,416·4	1,469·7
Brandon..	552·4	1,549·5	1,336·6
Regina..	776·6	1,773·7	1,112·4
Swift Current..	928·7	1,925·8	960·3
Bassano..	1,164·5	2,161·6	724·5

From the direct standpoint of a railway cost movement, the argument of the Montreal Refinery, having regard to the rate scaling applicable to the territory in question, is sound.

The prairies enjoy a lower standard rate than does British Columbia. These rates are fixed having regard to the extra cost of construction, operation, and maintenance in British Columbia. As a result Bassano is the station where the rates most nearly meet, although the movement from Vancouver over the mountains has but a mileage of 724·5 miles, while the haul from Fort William is 1,164·5 miles.

The same considerations plus the water rate east of Fort William would make Swift Current the breaking point for rail haul from Vancouver of 960·3 as against the rail-lake and rail haul from Montreal of 1,925·8 miles.

This, however, is entirely a railway problem. These considerations are ones which the railways could well submit for consideration on an application made against them.

It does not occur to me, however, that the arguments come with the same force from competing shippers. The question then to be considered is whether they have been unjustly discriminated against—whether their rates are fair.

Neither railway company interested (the Canadian Pacific and the Canadian Northern) makes the slightest complaint against the adjustment that has been made. In view of difficulties of operation and expenses of construction, I am perfectly free to admit that the old blanket rate which was put in by the Canadian Pacific for the express purpose of assisting the British Columbia refineries was unduly low, and the commodity did not bear its proper share of the common burden of transportation.

On the other hand, it is absolutely in the railway companies' interest, as well as in the interest of the public, that there should be a considerable movement from Vancouver. The companies in British Columbia must get traffic density if possible, and it is perfectly open to them to put in commodity rates below standard rates when it is found necessary and advisable to do it and when that commodity rate, in view of the increased density, will make a remunerative return to the company.

To my mind it is impossible to say that the eastern refineries are unduly or unjustly discriminated against. Under the readjustment they are getting just as fair a recognition of their geographical position as they are entitled to. They enjoy a preference as against Vancouver, not only in the whole of the east, but have a lower rate in western prairie territory as far west as Regina. Regina means a rail-lake and rail movement from Montreal of 1,773.7 miles as against a rail haul from Vancouver of 1,112.4 miles.

I am of the opinion that this extra movement of 561 miles ought at least to satisfy the Montreal refineries and do ample justice to their geographical position, although it well may be that the theoretical and indeed actual railway costs as against the lower water movement from Montreal to Fort William would technically justify the rates breaking at Swift Current.

As I see it the question is one which cannot be considered from the narrow standpoint of any one particular section, but in the interests of the country as a whole, and I am convinced that it would be against the public interest to break these rates at Swift Current, and that it is in the public interest that they should break at Regina.

Complaint of the Atlantic Sugar Refineries, Limited.

Complaints have been made to me by this refinery. The first complaint, in effect, raises the question as to whether or not St. John should directly participate in the saving brought about by the reduction which railways make to meet the competition by water from Montreal west. The letter is as follows:

"MONTREAL, September 11, 1918.

"We wish to state that we are now advised by the Canadian Pacific Railway that to such points as Toronto and Hamilton on which they have a 5th-class Summer and Winter rate they are basing our rates on the Standard, or Winter, Montreal rate plus our 14½ cents differential as established by you.

"This is not in accordance with the Order in Council as recommended by you, which states that rates on sugar from St. John, N.B., to points west of Montreal shall be 14½ cents more than the current rates from Montreal to the same destinations.

"As we understand it the points covered under this Summer and Winter 5th-class rates are mentioned in G.T.R. Tariff 372, C.R.C. No. E-3958.

Between	Cobourg	and	Hamilton.
"	Hastings	"	Peterborough.
"	Quays	"	Fraserville.
"	Brooklin	"	Pt. Perry.
"	Agincourt	"	Stouffville.

"We infer from the Order in Council that our rate should be 14½ cents over the Summer rate from Montreal to the various points mentioned when they are in effect and 14½ cents over the Winter rates to these points when they are in effect."

I am of the opinion that the point is not well taken. The report deals with the standard 5th-class rate tariff. In reducing that tariff in favour of St. John, St. John in effect is given a commodity rate. The differential of 14½ cents which was established is a differential fixed having regard to that standard rate.

The railways have the right to meet water competition. In meeting water competition discrimination cannot be charged as against railways by points not subject to that water competition. No movement from St. John could be taken from the railways as a result of water competition at Montreal. Effect ought not to be given to the complaint.

A further complaint was made by the same company relative to the minima charged in the published tariffs. The complaint is as follows:—

"MONTREAL, September 20, 1918.

"Confirm telephone conversation with you this afternoon relative to the increased minimum shown on the Tariff published in connection with the rates on our refined sugar shipments from St. John, N.B., to all points in Canada.

"This is given as 40,000 pounds, an increase of 10,000 over the minimum which we formerly enjoyed.

"We take exception to the application of the 40,000 pound minimum on our shipments when the Montreal Refineries, shipping under a 5th-class rate, can take advantage of the 24,000 pound minimum under this classification.

"In as far as possible for the past year we have shipped the majority of our cars containing 40,000 pounds, 60,000 pounds, and in some cases 80,000 pounds, but there are numerous points to which we ship which cannot accommodate more than 30,000 pounds of sugar particularly at the present time when the sugar shortage in Canada is so serious and the Food Board insists upon as wide a distribution of the available supplies as possible.

"We submit, inasmuch as the question of minimum weight of sugar shipments was not mentioned in the hearing at Ottawa, it was not your intention to make us a concession on the question of rates and penalize us on the minimum."

The movements under the 5th-class taking the higher rate have the advantage of the lower minimum. The minimum which the Atlantic Sugar Refineries are subject to is the proper minimum for a commodity rate. Under the Order, sugar from St. John moving at a rate below fifth-class, and therefore not on standard moves at a commodity or special tariff rate. To extend class minima to movements under special rates would be against railway practice.

The Atlantic Sugar Refineries have the option either of forwarding the movement at the minimum fixed for the commodity or, in cases where the Order is such that the movement could not be made, of forwarding on the fifth-class basis.

In the great majority of cases there is absolutely no hardship worked by a minimum of 40,000 pounds.

This complaint was followed by a further letter from the company as follows:—

"Montreal, September 27, 1918.

"We received to-day a copy of the Tariffs covering shipments of sugar and syrup from the British Columbia Sugar Refining Company at Vancouver, B.C.

"We note that, despite the contention of the Canadian Pacific Railway with reference to our rates being commodity rates and we being penalized on a

minimum weight of 40,000, that the above mentioned tariff, likewise on so-called commodity rates, only carries a minimum of 30,000 pounds.

"We are unable to get a satisfactory explanation from any of the railway officials in this city, and in view of our letter to you of several days ago with reference to the increased minimum effective on our shipments, we thought the foregoing sufficient of a precedent to warrant our again calling this matter to your attention.

"We would be glad to hear from you at your early convenience regarding your decision. At the same time we would ask, if consistent, that, should your decision be favourable to us by reducing the minimum to the old weight of 30,000 pounds, this be made retroactive as from September 12 when the new rates became effective."

It is perfectly true that the movement from the British Columbia plant being below fifth-class is a commodity rate, and that movement carries a minimum of only 30,000 pounds.

In establishing a reasonable carlot minimum in eastern territory, the question is not necessarily bound one way or the other by western practices, any more than the eastern rate is bound by the mountain rate of British Columbia. As a general rule, however, the higher the rate the lower the minimum within, of course, the limits of the classification minimum for the class.

As already pointed out in this report the mountain rate is higher than the prairie rate, and the prairie rate (notwithstanding the fact that rates have recently increased more in eastern territory) is still in turn higher than the rate ex. St. John. The British Columbia rate structure being entirely different to that in Eastern Canada it cannot well be said that the St. John Refinery suffers from any undue or unjust discrimination extended in favour of the Vancouver Refinery.

It is in the public interest that cars be used as intensively and loaded as heavily as practicable. The company's letter shows that sugar can be loaded as heavily as 80,000 pounds. The minimum of 40,000 pounds, if not exceeded, thus means that with it only fifty per cent of the car capacity is used, except in the case of small cars whose carrying capacity is small.

As already pointed out, in any event the complaining company can at any time and to any point where sugar is required, ship at the same rates as its real competitors (other eastern refineries) and at the lower minimum.

I am of the opinion that no action should be taken on any of these complaints, the Order as made to stand until the movements of raw sugars are no longer subject to war conditions.

H. L. DAYTON.

October 25, 1918.

Complaints of the Burlington Beach Commission, the Town of Burlington, and citizens of Hamilton, Burlington, and Burlington Beach against the train service of the Hamilton Radial Electric Railway Company between Hamilton and Burlington Beach.

File No. 27436.

THE CHIEF COMMISSIONER:—

An application was made by the Burlington Beach Commission, the town of Burlington, and citizens of Hamilton, Burlington and Burlington Beach for an Order directing the Hamilton Radial Electric Railway Company to give a proper service on its system running to and from the respective municipalities interested to the city of Hamilton.

The question is linked up to some extent with a previous application made by the railway company for an increase in its rates. The company is losing money. It has been losing money for several years. It has at the present time a large floating debt. It is financed, and its operations have been continued on advances made by a company which, although entirely separate from the Radial, is controlled by the same interests.

At the hearing, which was held in Toronto, October 17, 1918, the company stated that it would have to discontinue service unless its rates were advanced. As pointed out in the Board's judgment of July 12, 1918, although the Board has found that the company was losing money and required more revenue in order to maintain a proper service, the Board, speaking generally, is without jurisdiction to increase the rates, held down as they are by specific by-laws and for the reasons and on the grounds set out in the Board's judgment.

The present service is not satisfactory. The whole matter was left with the parties by the Board in the hope that some adjustment would be made between the municipalities and the company, the Board at the hearing stating that in case no solution to the problem was found, an Order would issue requiring the company to carry out the service it was compelled to give under the appropriate municipal by-laws.

Burlington reports that no conclusion has been arrived at, and that the company has notified the municipality that it will cease operations on the 13th instant and the municipality requests that the Order it is entitled to under the agreement should issue.

Under the established practice of the Board services which are unaccompanied by such cash returns as will enable the company to continue its operations cannot be ordered by the Board under the Railway Act. The Board has held, and it must be clear, that a rate is unreasonable when too low just as much as it is unreasonable when it is too high; that rates must be reasonable, having regard to the company, just as much as they have to be reasonable having regard to the travelling public.

No case, in the present instance, has been made for an Order under the Board's powers under the Railway Act. The question of service and remuneration is covered by the municipal agreements. Apart from municipal agreements and apart from the municipalities insisting on the fares reserved by their agreements, which have proved to be entirely insufficient, the Board could and would order such a service as would reasonably accommodate the public and at a rate fair to the public and fair to the railway.

In view, however, of the municipal by-laws, confirmed as they are by the Dominion Legislature, the Board can only exercise, in the present case, its jurisdiction which enables it to order that the by-laws should be carried out. Under the by-laws, the company is obliged to run six trains into and out of Hamilton. Burlington has submitted the schedule it desires to have adopted for these trains. The schedule is as follows:—

To leave Burlington 6 a.m., 8 a.m., 10 a.m., 1 p.m., 5 p.m., and 7 p.m.

To leave Hamilton 7.10 a.m., 9.10 a.m., 11.10 a.m., 4.10 p.m., 6.10 p.m., and 11.10 p.m.

The company has not shown this to be an unreasonable schedule. On the contrary, from what transpired at the hearing, if a limited service is to be put into force instead of the hourly service which has been maintained in the past, the schedule would seem to be reasonable. At any rate, the municipality asks that this order should go.

The Order is asked under the terms of the agreement and as the measure of service enforceable against the company under the agreement. The resultant service is not satisfactory or sufficient, but service as such is not now considered. What the municipality's position turns on is the enforcement of its agreement, including as that does not only the limitation of rates to a sum insufficient for the company's requirements, but also the limitation of service to an extent entirely insufficient for the

demands of public traffic. This condition, of course, can only arise when the Board's hands are tied as in the present instance.

The by-laws are not quite clear as to whether the running of a single car at these hours would be sufficient, or whether trains should be run. Both terms are used. As service is to be given at these hours it should be a service sufficient to transport those requiring to use the line at these hours. Where one car is insufficient it must be supplimented by other cars. It is a matter of regret that no adjustment has been made between the parties. The service ordered can well be considered as representing a minimum of what ought to be done. It is the service which was enforceable under the contracts, and undoubtedly business has since much increased.

It is to be hoped that even at this late date the parties will get together. The company demands that the municipalities should abandon all maximum fare limitations under their by-laws, and the company has submitted the following schedule as showing the rates which must be put into effect in order to secure its continued opera-

In either direction from Hamilton.	Miles.	Workman's individual com- mutation, 54 trips limited one month.		Family commutation, 54 trips limited three months.		Regular rates from Hamilton.	Miles.	Rates.
		Price.	Rate per trip.	Price.	Rate per trip.			
		\$ cts.	\$ cts.	\$ cts.	\$ cts.			\$ cts.
Kenilworth	3 95	4 60	0 7½	5.40	0.10	Kenilworth.	3 95	0.10
Ghents	5 10	4.00	0 7½	5.40	0.10	Station 6	6 53	0.15
Canal	8 49	5.40	0 10	8 10	0.15	Canal	8 65	0.20
Burlington	10 65	6 75	0.12½	9 45	0.17½	Burlington	10 65	0.25
Pine Cove.	12 51	8.10	0.15	10.80	0.20	Pine Cove.	12 51	0.30
Bronte.	16 73	10 80	0.20	16.20	0.30	Bronte	10 73	0.35
Oakville	21 22	16.20	0 30	21.60	0.40	Oakville	21 22	0.45

Sch ol rates to remain as at present.

tion. At the same time the company expressed its willingness to continue to operate without naming any schedule at all, if the municipalities would waive their by-laws and leave in the Board full and untrammelled authority to fix the rates and train service of the company.

In some instances the local authority is willing that this should be done, for example, the Burlington Beach Commission have adopted the following resolution:—

Resolved that this commission hereby consents to vesting in the Dominion Railway Board full authority to fix the rates and train service of the Hamilton Radial Electric Railway Company within the jurisdiction of the Burlington Beach commission.

The whole question, however, on account of the by-laws, has to be one of entire consent. It will be extremely inconvenient and hurtful to the municipalities if service is discontinued. A course of action which might well be considered would be for all the parties to agree to the adoption of the company's scale of rates, but for some limited period, say, two years, from the time the rates become effective, at the expiration of this period all municipal by-laws to become of full force and effect. If this is done the municipalities will not waive any permanent rights, they merely temporarily suspend them. In the meantime, the public will get service and the company will not be prejudiced because the temporary service will be at rates which it has itself proposed. The company, of course, will not get what it now desires and that is cancellation of all rate restrictions, but on the other hand it in turn waives no rights and will get the earnings which it is asking for during the temporary period.

Some of the municipalities at any rate are not content with the expense returns filed. The delay will enable such particulars of costs to be prepared and such detailed studies to be made as will result in there being no question whatever as to what the actual position is.

The delay will also enable the municipalities to get together and make, if necessary, such arrangements under which the line, if the company still desires to stop operations, can be acquired and operated by the municipalities.

December 10, 1918.

Commissioner Goodeve concurred.

The Canadian Fairbanks-Morse Co., Ltd., vs. Dominion Express Company.

File 4214.603.

REPORT OF CHIEF TRAFFIC OFFICER.

Applicants sold to one of the ship-building firms on the coast a bolt-cutting machine which they ordered from the Landis Machine Company of Waynesboro, Penn. The copies of letters and telegrams which passed between the parties show that the original intention was to move the machine by freight to Galt, Ont., to be there incorporated with a carload for the same consignees, so that owing to the prevailing traffic congestion the machine might make a better transcontinental run than as a separate l.c.l. shipment. The exhibits also show the delay in turning out the machine at Waynesboro owing to priority orders of the United States Government, to the detriment of urgent ship construction at Vancouver, with the result that it was finally decided to ship by express. Instead, however, of ordering express shipment through to Vancouver, applicants, by telegram dated October 29, 1917, directed the Landis Company to forward by American Express to the Canadian Fairbanks-Morse Co., Niagara Falls, Ont., notify Dominion Express agent; and by telegram dated November 3 to the American Express Company, Niagara Falls, directed reshipment thence to Vancouver.

The Board's opinion is desired as to whether the ordinary merchandise rate, as charged, or the special tariff rate for shipments weighing 500 pounds or over, as claimed, was the proper rate from Niagara Falls. The weight of the machine is given as 4,750 pounds. The merchandise rate was \$9.50 per 100 pounds; the 500 pounds special rate \$7.60 per 100 pounds.

Had the machine been consigned through to Vancouver from Waynesboro, by American Express to Niagara Falls, thence via Dominion Express, the through rate would have been \$10.50 per 100 pounds. The rate from Waynesboro to Niagara Falls, Ont., was then \$1.90. This added to the 500 pounds special from Niagara Falls would make the total through rate \$9.50, or \$1 per 100 pounds less than the through rate, a saving of \$47.50 on the shipment. The explanation is that in the States the companies have no special tariff corresponding to the 500 pounds special in Canada.

Applicants, in their letter of May 23, deny Mr. Burr's assumption that the method adopted was "solely" for the purpose of bettering the through rate, and for proof point to their correspondence with the shippers. I am unable to see, however, that the correspondence or the delay in manufacture has any real bearing on the rate question. The clauses of the "Dominion's" tariff which applicants rely upon are the following:—

(b) Applying on our lines as proportional rates on shipments for or from points on connecting companies' lines where no specific through rates are in effect, when origin and destination points are both within Canada.

(d) Scale rates do not apply to shipments the origin or destination of which is in the United States.

Although very commonly used, I question the fitness of the term "point of origin" to signify the point of shipment. It is generally understood to mean the place where the movement under consideration begins, so as to distinguish it from a junction or rebilling point "en route." Had this machine been delivered to a consignee at Niagara Falls, and had he then shipped to Vancouver under another contract, I should consider Niagara Falls as the point of origin for the purpose of the second movement, even though evasion of the through tariff may have been the purpose; the mere border location of Niagara Falls being insufficient, in my opinion, to differentiate it from Toronto, for example, where a Waynesboro machine might be taken into a merchant's warehouse and be entitled, without question, to the 500-pound special from Toronto on reshipment.

This machine, however, did not leave the carrier's possession at Niagara Falls; it was consigned to the Dominion Express Company's agent, by whom it was rebilled to Vancouver. Such being the case, I consider that Waynesboro and not Niagara Falls was the point of origin within the meaning of the tariff, and that the merchandise rate was properly charged. (The Board is asked for an interpretation of the tariff as a basis for reparation, not for a decision as to its validity.)

Respectfully submitted,

OTTAWA, December 31, 1918.

The Board concurred in the views expressed by the Chief Traffic Officer and adopted the same as its judgment herein.
January 7, 1919.

Crossing of Cremazie Road by the Canadian Pacific Railway, being the first crossing east of Jacques Cartier Station, Que.

Electric bells at highway crossings where there are double tracks and heavy railway traffic.

File No. 9437.1338.

File No. 29097.

THE CHIEF COMMISSIONER:—

The pedestrian traffic at this crossing is very light. On the other hand the traffic on the railway is heavy. Viewed as a crossing apart from other considerations, it is not dangerous. There is a good sight line and there are no troubles as to grades. Viewed from the fact, however, that there is a heavy railway operation and to the more important fact that there are two tracks at the crossing, the above considerations become qualified.

The mere fact that in the comparatively short time of five years there have been no less than four accidents at a crossing so little used by the public as this one is indicates that there is a special danger resulting from the double track.

The present accident shows that the double track occasioned the injury. I think that the Board ought to consider the advisability of ordering the installation of electric bells as a minimum protection at all crossings where there is a double track and the railway traffic is heavy, irrespective of the amount of highway traffic.

With this end in view I think that the larger companies who have double tracks should be asked to make a return showing the number and location of crossings which are now entirely unprotected where there is a double track, and the number of trains passing over such crossings in a period of twenty-four hours.
January 9, 1919.

Commissioners Goodeve and Boyce concurred.

ORDER No. 27987.

In the matter of the Order of the Board No. 27691, dated September 16, 1918, directing the Grand Trunk and the Canadian Pacific Railway companies to arrange to make a connection at Inglewood Junction,

And in the matter of the application of the Grand Trunk Railway Company to be relieved from complying with the requirements of said Order.

File No. 24131.

TUESDAY, the 7th day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading the application and what is alleged in support thereof and the report and recommendation of the Chief Operating Officer of the Board; and upon its being represented to the Board that the changes proposed to be made by the Grand Trunk Railway Company in its passenger service over its Ontario lines as contained in its time table effective January 5, 1919, will better suit the convenience of the travelling public than the connection required by said Order,—

It is ordered: That the Order of the Board No. 27691, dated September 16, 1918, be, and it is hereby, rescinded.

H. L. DRAYTON,
Chief Commissioner.

GENERAL ORDER No. 259.

In the matter of the specifications for railway mail cars and the application by the Canadian Railway Mail Service Branch of the Post Office Department for an Order approving the same.

MONDAY, the 13th day of January, A.D. 1919.

File No. 3083.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, January 7, 1919, in the presence of counsel for the Canadian Pacific, the Grand Trunk, and the Canadian Northern Railway companies, and the Michigan Central and the New York Central Railroad companies, the Controller of the Canadian Railway Mail Service representing the Post Office Department in person, and what was alleged; and upon reading the representations filed on behalf of the Department and the railway companies affected; and upon the report and recommendation of the Board's Mechanical Expert, concurred in by its Chief Operating Officer, and its appearing that all interests have agreed to the adoption of the specifications filed as amended,—

It is ordered: That the "Specifications for Mail Cars," dated Ottawa, May 22, 1918, submitted by the Canadian Railway Mail Service Department, as amended and corrected and on file with the Board under file No. 3083 be, and they are hereby, approved and adopted as the standard to be used by railway companies operating in Canada and within the legislative authority of the Parliament of Canada.

H. L. DRAYTON,
Chief Commissioner

ORDER No. 28045.

In the matter of the complaint of the Universal Importing Company of Montreal, in the Province of Quebec, against the refusal of the Canadian Pacific Railway Company to divert a carload of Daifuku beans ex steamer "Chicago Maru" from Victoria wharf to New York.

File No. 25019. 10.

TUESDAY, the 21st day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Montreal, January 17, 1919, in the presence of counsel for the Canadian Pacific Railway Company, no one appearing for the complainant, and what was alleged,—

It is ordered: That the application be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28046.

In the matter of the complaint of John Barrett, of Montreal, Que., that the Canadian Pacific Railway Company refuses to sell monthly commutation books containing less than fifty-five tickets, between Montreal and Hudson Heights, in the Province of Quebec.

File No. 22598.24.

TUESDAY, the 21st day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Montreal, January 16, 1919, in the presence of counsel for the railway company, the complainant appearing in person, and what was alleged,—

It is ordered: That the complaint be, and it is hereby, dismissed.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28044.

In the matter of the application of the British Columbia Electric Railway Company on behalf of the Vancouver and Lulu Island Railway Company and the Vancouver, Fraser Valley, and Southern Railway Company for approval of its Standard Freight Mileage Tariff.

File No. 21404.

WEDNESDAY, the 22nd day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*S. J. McLEAN, *Commissioner.*

The said Standard Tariff having been filed on the basis prescribed by Order in Council P.C. 1863, dated July 27, 1918,—

It is ordered: That the British Columbia Electric Railway Company's Standard Freight Mileage Tariff C.R.C. No. 132 issued to become effective February 1, 1919, be, and the same is hereby, approved; the said tariff with a reference to this Order to be published in at least two consecutive weekly issues of the *Canada Gazette*.

H. L. DRAYTON,
Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

Vol. VIII

Ottawa, February 15, 1919

No. 23

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Application of the Toronto Terminals Railway Company, under sections 235 and 237 of the Railway Act, for authority to lay and maintain its conduits containing its pressure steam lines across Bay, Yonge, and Scott streets, and upon, along and across Esplanade street between a point west of Yonge street and Scott street, in the city of Toronto.

File No. 28950.

JUDGMENT.

The CHIEF COMMISSIONER:

The Toronto Terminals Railway Company was incorporated by Dominion legislation in 1906. Under this legislation the company was declared to be a work for the general advantage of Canada. The capital stock of the company authorized amounts to two million dollars. In the original Act the company was authorized to issue bonds and other securities to an amount not exceeding in the whole three millions of dollars. By legislation of 1913 this amount was increased to ten millions and by legislation of 1914 to twelve millions.

The main purpose of the company's incorporation is the construction and management of a new Union Station in Toronto, and the rights and obligations of the Grand Trunk Railway Company, which company in the first instance applied for the necessary lands, are transferred to the Toronto Terminals Railway Company, and both the Grand Trunk and the Canadian Pacific Railway Companies are expressly empowered to grant to the Toronto Terminals, on such terms and conditions and for such considerations as may be agreed to, all lands necessary for the purposes of the Terminals Company, freed from all securities, charges, and encumbrances which may have been created by virtue of the provisions of any Act passed prior to the execution of such conveyances.

Specific authority is also given to both the Grand Trunk and the Canadian Pacific Railway Companies to enter into agreements with the Terminals Company, as well as specific authority to the Terminals Company to enter into such agreements, which deal with the use of the whole or any part of the undertaking and property of the Terminals Company on such terms and conditions and on the payment of such rental as will yield a fair and reasonable proportionate return upon all the outlay for and in respect of the Terminals Company's undertaking, and of such charges, and compensation for services to be rendered by the company, as may be determined and agreed upon between the directors of the companies, subject to the approval of the Board of Railway Commissioners.

The Act of incorporation specifically provides that the Railway Act shall apply to the company and its undertaking. The construction of the Union Station has been largely completed, and the Terminals Company now desires to make provision for its heating. The application is opposed both by the corporation of the city of Toronto and by the Board of Harbour Commissioners of the same city.

The reply of the city of Toronto to the application is as follows:—

“The corporation of the city of Toronto is opposed to this application on the following, among other, grounds:—

“1. The Toronto Electric Light Company has no right, under its charter, to produce for sale or to distribute to others steam for heating or power purposes; and this Board has no power to confer such authority upon the said company.

“2. Neither the Toronto Electric Light Company nor the applicant has any right to lay conduits for the said purpose on the highways of this municipality without its consent.

“3. This municipality has no power to grant any franchise upon the public highways without submitting a by-law for the consent of the electors, under The Municipal Franchises Act, R.S.O., chapter 197.

“4. Neither the Railway Act nor the Act of Incorporation of the applicant authorizes the construction of the works referred to in the application upon the highways of this municipality without its consent.

“5. Under the agreement between this Municipality and the Toronto Electric Light Company, the municipality has the right to purchase, on the 30th November, 1919, all the interest and assets of the company, comprising plant, buildings, and material used or necessary for the carrying on of its business, upon giving one year's notice to the company of its intention to do so, and this notice was duly given to the said company on the 7th day of August, 1918, pursuant to by-law number 8009 of this municipality, and the right of the municipality should not be interfered with or rendered more burdensome by the granting of this application and conferring upon the applicant the right to receive a supply of steam from the company, as contemplated by this application.

“6. The plants and buildings of the Toronto Electric Light Company stand partly upon lands required for the completion of the Toronto viaduct, referred to by the Dominion Act, 4-5 George V, chapter 54, which the applicant and other railway companies and others are required to construct along the water front in this municipality, and the construction of the said viaduct may be delayed or postponed by the granting of this application.

“7. The real object aimed at by this application is the conveyance of steam for heating purposes upon and along the highways mentioned in the application, and the applicant has not this right where such steam is generated and supplied by a company having no rights upon the highways of this municipality.”

The Terminals Company's solicitor makes the following answer to this reply:—

“Referring to the reply of the city of Toronto, copy of which the city solicitor sent me, I beg to say that the delay in making arrangements for heating at once will very seriously delay the completion of the building and the applicant company feels that the opposition raised by the city of Toronto is unwise from all sides of proper policy and is not based upon any valid legal grounds.

“The opposition to this proposition appears, from what has been published in the press, to be due to a desire to compel the applicants to obtain their supply of electricity from the Toronto Hydro-Electric plant. This is quite a natural desire on the part of the city, and the applicant company was disposed to do whatever it could to comply with that desire if it were possible. However, the matter resolved itself into purely a business proposition, and in order to make this clear I enclose copy of Mr. Leonard's letter to the president of the company, of September 7, 1917. This demonstrated that there would be a saving

of \$40,000 a year between putting in our own power and heating plant and buying the power and heat. The Hydro-Electric could not provide the heat and have no facilities for doing so, and if we were obliged to put in our own steam plant we would necessarily be compelled to make our own electricity, as with our own power-house and boilers to make steam for heating, the extra cost of using the same plant for making the electric energy would be such a small addition as to make it impossible for the Hydro-Electric, or any other exclusive electric supply, to furnish it to us at the cost of production.

"With reference to paragraph 5 of the city's reply, it is difficult to see how the making of the intended arrangement could interfere with their acquisition of the plant, etc., of the Toronto Electric Light Company. If they intend to acquire this plant they would fall heir to the contract for the supply to this company. So far as the Electric Light Company are concerned I have no instructions to speak for them, but I have no doubt they are entering into it merely as a matter of business because it enables them to get some revenue out of the coal they necessarily consume and the labour necessarily expended in keeping their auxiliary steam plant at all times under fire to meet any emergency due to a break in their transmission service.

"The building cannot be finished before next autumn unless we can get heat into it this winter; it will not be possible to go ahead with the plastering this winter unless under heat; the finishing and other trades cannot be started until the plastering is done. In fact if there is no heat, work will have to be closed down for the winter and not be resumed until suitable weather next spring.

"The Act incorporating the Toronto Terminals Railway Company is 6 Edward VII, chap. 170, which confers all the necessary powers for acquiring land for constructing and establishing a terminal union passenger station and the interpretation of the word "railway" in the Railway Act is sufficiently wide to allow the Board to make the Order asked for under sections 235 and 237 of the Railway Act.

"For the reasons above stated, it would seem desirable that the matter should be settled at the earliest possible moment."

The application was heard at a sittings of the Board held in Toronto on January 13, 1919, when judgment was reserved. Mr. Chisholm, K.C., appearing for the Toronto Terminals Railway Company, Mr. Fairty for the city of Toronto, and Mr. McMaster for the Harbour Commissioners.

The question of jurisdiction was raised by both the opposing interests. It was also strongly urged that in view of the fact that the city had given notice to take over the plant of the Toronto Electric Light Company, and, further, that the construction of the viaduct would of necessity involve the construction of the power house for the Toronto Electric Light Company, no Order should be made.

The cost figures submitted by the company at the hearing, which show that the construction of the necessary heating and lighting plant would cost \$600,000, and that the annual saving would approximate \$40,000, were not challenged, nor the further statement that if the Toronto Terminals Railway Company were obliged to construct a power-plant of their own they had not any place on which it could be constructed on the block between Bay and York streets, but it would have to be put farther west, and that the company of necessity would have to cross city streets in order to bring steam generated by itself into the building.

The powers of the company are defined by section 9 of its Act of incorporation, which reads as follows:—

"The company may, for the purposes of its undertaking, acquire all lands or interests therein, rights and easements which the directors consider requisite or desirable, and may construct, provide, maintain, and operate at the city of Toronto a union passenger station with such buildings, structures, tracks, sidings, connections, yards, equipment, and appliances for the supply of heat,

light, water and power, terminal and other facilities as are suitable or advantageous for the efficient, expeditious, and economical handling and interchange of all passenger, express and mail traffic of such railway companies as desire to use the said station and facilities, or for the convenience and accommodation of all business usually appertaining to a terminal union passenger station, and may from time to time thereafter enlarge, improve, renew, and increase such passenger station, buildings, structures, tracks, sidings, connections, yards, equipment, and appliances and terminal and other facilities in such manner and to such extent as the business of the company renders expedient, and in connection with its undertaking may erect, manage, or control hotels, restaurants, offices, shops, storage, and other rooms and conveniences and lease them or any portion thereof, and may, subject to the provisions of The Railway Act, 1903, enter into agreements with any telegraph or telephone company respecting the installation of its apparatus in the said station, the carrying on of the business of any such company therein and the payment of such rents, tolls, and charges therefor as are from time to time fixed by the company, and approved by the Governor in Council upon the report of the Board of Railway Commissioners for Canada, and may establish and operate for hire a service for the conveyance and transfer of passengers and baggage by means of omnibusses, cabs, or other road conveyances, and may acquire, hold, guarantee, pledge, and dispose of shares in any company having for one of its objects the establishment or operation of such a service."

Under the powers thus expressly conferred the company may acquire lands considered as reasonable or desirable, or interests in such lands and rights and easements. The company is given direct authority to construct, provide, maintain, and operate the union passenger station with such buildings, structures, tracks, sidings, connections, yards, equipment, and appliances for the supply of heat, light, water, and power, as well as terminal and other facilities as are suitable or advantageous for the efficient, expeditious, and economical handling and interchange of all passengers and express and mail traffic of such railway companies as desire to use the station and its facilities.

In my opinion there is no doubt that the company is empowered to construct, provide, maintain, and operate all equipment and appliances for the supply of heat, light, water, and power to be used by the company in its undertaking and necessary therefor.

As already pointed out, the Railway Act applies to the company and its undertaking. In connection with its undertaking the company exercises largely if not (indeed) entirely the functions of the ordinary railway company, for example, the company is to build, maintain, and operate railway tracks, sidings, connections, yards, and all the necessary equipment which will enable it properly and economically to conduct the business of the different companies entering into agreements with it.

In these activities the company of necessity is bound to cross highways, just as much as any other company is bound to. It would therefore seem entirely proper that the Act should contain the declaration which it does.

The right of companies to cross highways is covered by sections 235 and 237 of the Railway Act. No question whatever is raised as to the operation of these sections, except on the ground that the works involved by the present application do not fall within the term "railway" as defined by the Act. Sub-section (21) of section 2, in defining "railway" states that the word means "any railway which the company has authority to construct or operate, and includes all branches, sidings, stations, depots, wharfs, rolling stock, equipment, stores, property, real or personal, and works connected therewith, and also any railway bridge, tunnel, or other structure which the company is authorized to construct."

It is obvious that the highway sections could not contemplate many of the things covered by the definition, for example, stations, depots, wharfs, could not by any stretch of imagination fall within their provisions. On the other hand, necessary

equipment for running the railway undoubtedly may be installed, for example, the regular telephone and despatch wires may be carried across the highways, as may also the necessary rods for signalling, interlocking, or derailling purposes.

It might well be argued that the power mains or light mains running into the station form part of the railway equipment. The issue, however, is made the clearer by specifically mentioning "any railway bridge, tunnel, or other structure which the company is authorized to construct."

In the present case the Company's Act of incorporation enables it to "construct, provide, maintain, and operate. . . . equipment and appliances for the supply of heat, light, water, and power." The company is, therefore, specially authorized to construct the necessary steam mains, and it has been shown by the company, and not contradicted, that in order to do this, whether the heat is taken from the Toronto Electric Light or from a plant to be constructed by the company, it is necessary that streets be crossed.

There would seem to be no object in the incorporation in the company's powers of any reference to heat, light, water and power equipment and appliances if the manufacture must be confined to the Union Station proper. If it was so confined undoubtedly, under its general powers to maintain and operate a Union Station, the company would have the right not only to light and heat it, but to supply the necessary power for its elevators and other conveniences and water for its use.

Mr. McMaster argued that the effect of section 9 of the Company's Act of incorporation was merely to enable the company to provide, maintain, and operate a heating and lighting plant, not that they were enabled to enter into arrangements with other companies; that the intention was to operate the plant themselves and to maintain and provide it; and that when power was sought to enter into agreements with other companies to supply the facilities it was expressly granted.

The section does, as Mr. McMaster points out, expressly provide that the company may enter into agreements with any telegraph or telephone company respecting the installation of its apparatus in the said station, the carrying on of the business of any such company, therein, and the payments of such rents, tolls, and charges therefor as are from time to time fixed by the company, etc.

I am of the opinion that the two classes of activities referred to are entirely distinguishable. Heat, light, and power are required for the operation of the station as such. So long as the company does provide heat, light, and power it seems to be perfectly immaterial how or from what source the necessary electricity or steam is generated.

The company, under the Railway Act, is bound both to light and heat the station. It is not bound to go into the telegraph or telegraph business, or to permit any telegraph or telephone company, for the purposes of its business, to install its apparatus in the station. Finding as I do jurisdiction in the Board to grant the application, the merits remain to be considered.

On the merits and in opposition to the application it is stated that the city, on the 7th of August, 1918, served notice on the Toronto Electric Light Company of the intention of the corporation to expropriate their properties, and it is urged on this and other grounds that the application should be refused.

His worship the mayor has been so kind as to forward me a copy of his inaugural address, which contains the following paragraph:—

"*Re Toronto Electric Light Company.* This franchise falls in this year, 1919. In my opinion the city should not acquire it and the notice given to take over the plant should be rescinded. The Hydro has proved a great success, both as to domestic and commercial lighting, and with the early completion of the extension to the Hydro system and the Chippewa scheme there will be an abundance of power for all purposes, including the operation for public utilities."

The question as to whether the city will or will not acquire the plant of the Toronto Electric Light Company would appear to be at least open to question. In

any event, however, that question is entirely one for the municipal authorities. Assuming, however, that the city in the long run does acquire the plant this, of itself, can constitute no reason why the Toronto Terminals Railway Company should not heat the station at the lowest possible cost, that coal should not be saved, and that the quantity of smoke which Toronto is now subject to should be further added to by an unnecessary boiler-plant construction. But on the other hand the general public interest would rather appear to demand that steam now going to waste should be utilized.

The statutory rights of the Toronto Electric Light Company were challenged. With this question again the Board has nothing to do; it cannot add to them nor detract from them. The Toronto Electric Light Company is not a party to the proceedings, and the question as to whether or not the Union Station Company can obtain the necessary heat and light from them is entirely a question for that company. It, however, says that it can.

Objection is also taken on the ground that the viaduct would run into the plant of the Toronto Electric Light Company. This objection of course stands on a different basis to the acquisition of the plant by the city. If the city acquires the plant, I have no doubt it would be glad to make use of its waste steam and get a revenue from it. On the other hand, if the viaduct entails the complete destruction of the plant and no provision is made for reinstatement of it so as to avoid claims for business losses, a very different situation arises.

Looking at the plans apparently the company's stack would not of necessity be destroyed, but the furnaces and boilers as now laid out would be interfered with. It probably would be necessary to build another set on the other side of the stack and then cut them in if the company's operations are continued.

It is impossible, however, absolutely to forecast what will be done, and as I see it the Board ought to be careful in doing nothing which will militate against the construction of the viaduct. In order to obviate any possible difficulty on this score, any Order that may be made must be regarded as merely temporary and subject to cancellation by further Order of the Board. No new right should be given which either directly or indirectly can create a new permanent vested interest and render the construction of the viaduct the more expensive.

The streets crossed, as streets, will not in any way be affected. The construction will be underground and must be made at the entire expense of the Terminals Company, and the highways restored to a good and sufficient condition for traffic.

In my opinion the Order should go subject to the above conditions.

January 21, 1919.

Commissioners McLean and Goodeve concurred.

ORDER No. 28071.

In the matter of the application of the Toronto Terminals Railway Company, hereinafter called the "applicant company," under sections 235 and 237 of the Railway Act, for authority to lay and maintain its conduits containing its pressure steam lines across Bay, Yonge, and Scott streets, and upon, along, and across Esplanade street, between a point west of Yonge street and a point east of Scott street, in the city of Toronto, and province of Ontario, as shown coloured red on the plan and profile Drawing No. 21-00, dated June 28, 1918, on file with the Board under file No. 28950.

FRIDAY, the 31st day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. MCLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Toronto, January 13, 1919, in the presence of the counsel for the applicant company, the city of Toronto, and the Toronto Harbour Commissioners; and what was alleged,—

It is ordered: That the applicant company be, and it is hereby, authorized to lay and maintain conduits containing its pressure steam lines across Bay, Yonge, and Scott streets, and upon, along, and across Esplanade street, between a point west of Yonge street and a point east of Scott street, in the city of Toronto, and province of Ontario, as shown coloured red on the said plan and profile on file with the Board under file No. 28950, subject to and upon the following conditions, namely:—

1. That the highways affected by the construction hereby authorized shall be restored as nearly as possible to their former state, and put in such condition as not materially to impair the usefulness thereof.

2. That the cost of constructing and maintaining the said conduits and of restoring the highways to a proper condition be borne and paid by the applicant company.

3. That the Order hereby granted shall be temporary only and subject to cancellation by further Order of the Board.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28048.

In the matter of the application of the county council of the county of Lennox and Addington, hereinafter called the "applicant," for readjustment of the train service furnished by the Canadian Northern Railway Company at Napanee, and also on its branch line north from Yarker to Tweed, in the province of Ontario.

File No. 27633.

FRIDAY, the 17th day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. MCLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Ottawa, January 7, 1919, the applicant, the townships of Sheffield and Camden, the village of Newburgh,

and the Canadian Northern Railway Company being represented at the hearing, and what was alleged; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the Canadian Northern Railway Company be, and it is hereby, directed to establish a mixed train, carrying both baggage and express, to run daily except Sunday as follow:—

Leave Yarker at 9.40 a.m., arrive at Napanee at 11.00 a.m., stopping at intermediate points.

Leave Napanee at 4.30 p.m., arrive at Yarker at 6.00 p.m., stopping at intermediate points.

such service to become effective on the 22nd day of January, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28053.

In the matter of the question of the additional protection to be provided and the changes to be made in connection with the diamond crossing of the Kitchener and Waterloo Street Railway at King street, in the city of Kitchener, Ont.

File No. 113.

TUESDAY, the 21st day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon the report and recommendation of an Engineer of the Board, concurred in by its Assistant Chief Engineer, and reading what is filed on behalf of the Kitchener and Waterloo Street Railway and the Grand Trunk Railway Companies,—

It is ordered: That the Kitchener and Waterloo Street Railway Company be, and it is hereby, directed, at its own expense (a) to move its north derail at the said crossing to a point one hundred feet, and its south derail to a point seventy-five feet, from the nearest rail of the Grand Trunk Railway Company's track; and (b) to place clusters of lights with a red light in the centre of each cluster over the said derails.

2. That the work herein required to be done be completed not later than the 1st day of April, 1919.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28050.

In the matter of the application of the Canadian Northern Railway Company, herein-after called the "applicant company," in pursuance of the General Order of the Board No. 119, dated January 31, 1914, for authority to remove the agent at Nutana, in the province of Saskatchewan, and to close the agency.

File No. 4205.171.

WEDNESDAY, the 22nd day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading the application and what is alleged in support thereof and the report of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the applicant company be, and it is hereby, granted leave to remove its station agent at Nutana, in the province of Saskatchewan, and to close the agency at that point.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28055.

In the matter of the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular station agent at Kincorth, in the province of Saskatchewan.

File No. 4205.172.

WEDNESDAY, the 22nd day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*
A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application and upon the report and recommendation of an Inspector of the Board, concurred in by its Chief Operating Officer,—

It is ordered: That the applicant company be, and it is hereby, granted leave, pending further Order to remove its regular agent at Kincorth, in the province of Saskatchewan, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, and when necessary heated and lighted for the accommodation of passengers on the arrival and departure of trains, and to care for less than carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28063.

In the matter of the application of the Canadian Northern Railway Company for an Order amending the Order of the Board No. 14606, dated August 21, 1911, providing for interswitching at Brandon.

File No. 14820.

MONDAY, the 27th day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon reading what is alleged in support of the application, the Canadian Pacific Railway Company consenting; and upon the report and recommendation of the Chief Traffic Officer of the Board; and upon its appearing that clause 2 of the said Order No. 14606 conflicts with clause 7 of the General Interswitching Order No. 252, dated October 28, 1918,—

It is ordered: That the said Order of the Board No. 14606, dated August 21, 1911, be, and it is hereby amended by striking out the words and figures "eight dollars (\$8.00)" in the eighth line of clause 2 thereof and substituting therefor the words and figures "twelve dollars (\$12.00)."

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28064.

In the matter of the application of E. J. L'Esperance of Montreal, Que., hereinafter called the "applicant," for an Order directing the New York Central Railroad Company to stop all its trains, both incoming and outgoing, at Westmount station, Montreal, Que.

File No. 28757.

MONDAY, the 27th day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
 Hon. W. B. NANTEL, *Deputy Chief Commissioner.*
 S. J. McLEAN, *Commissioner.*

Upon hearing the application at the sittings of the Board held in Montreal, January 16, 1919, in the presence of counsel for the New York Central Railroad Company, the applicant appearing in person, and what was alleged; the railway company consenting,—

It is ordered: That the New York Central Railroad Company be, and it is hereby, directed to stop all its trains, both incoming and outgoing, on flag at Westmount station, in the city of Montreal, and province of Quebec.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28065.

In the matter of the General Order of the Board No. 119, dated January 31, 1914, and the application of the Canadian Pacific Railway Company, hereinafter called the "applicant company," for authority to remove its regular agent at Naughton station, on its Webwood subdivision, in the province of Ontario.

File No. 4205.174.

MONDAY, the 27th day of January, A.D. 1919.

Sir HENRY L. DRAYTON, K.C., *Chief Commissioner.*
 A. S. GOODEVE, *Commissioner.*
 A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application and the consent of the municipality of the township of Waters filed; and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the applicant company be, and it is hereby granted leave, pending further Order, to remove the regular agent at Naughton station on its Webwood subdivision, in the province of Ontario, subject to and upon the condition that a caretaker be appointed to see that the station is kept clean, when necessary heated and lighted for the accommodation of passengers on the arrival and departure of trains and to care for less than carload freight and express matter.

H. L. DRAYTON,
Chief Commissioner.

ORDER No. 28073.

In the matter of the application of the Henderson Farmers' Lime, Limited, Woodstock, Ont., for suspension of the proposed increase in rates on agricultural lime or stone dust from Kirkfield, Ont.

File No. 26786.

WEDNESDAY, the 5th day of February, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon reading what has been filed in support of the application, and upon its also appearing that a similar advance in rates on the same commodities is proposed from Beachville, Ont.,—

It is ordered: That the Grand Trunk Railway Company's Supplement No. 16 to Tariff C.R.C. No. E-4024, and the cancellation of item 195 in the Canadian Pacific Railway Company's Supplement No. 14 to Tariff C.R.C. No. E-3551 be, and they are hereby, suspended pending hearing at a date to be fixed by the Board.

W. B. NANTEL,

Deputy Chief Commissioner.

The Board of Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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Complaint of J. H. Warrington, Cornwall, Ont., et al., re present classification for live poultry in carload shipments.

File 25672.24.

JUDGMENT.

Mr. COMMISSIONER GOODEVE:

This complaint was heard at Ottawa, September 18, 1917, when judgment was reserved in order to permit further submissions to be made by complainants. These have now been received.

Canadian Classification No. 16 provides the following minima for live poultry in carloads:—

	Pounds.
Single deck.....	20,000
Double deck.....	22,000
Triple deck.....	24,000
4 or more decks.....	26,000

at 6th-class rate.

The official classification provides for a minimum weight of 18,000 pounds at 2nd-class rate with provision for man in charge free. An allowance is also made of 1,500 pounds to cover feed, water, etc.

In the proposed Canadian Classification No. 17, minimum weight of 18,000 pounds is provided with a 3rd-class rating. No allowance, however, is made to cover feed and water.

The western classification makes the minimum 18,000 pounds, and rating 2nd-class, with no allowance for feed and water. An exception to this classification, however, in some cases gives 3rd-class.

Mr. Warrington desires a flat minimum of 10,000 pounds with 9th-class rating, the same as is provided for live stock. Other complainants do not ask for a reduction in the classification but desire a reduction in the minimum weight.

I think the evidence submitted makes it quite clear that the minima weights in the present classification were never intended to represent the actual loading capacity, but were designed to produce reasonable carload remuneration at the classification rating of 6th-class. This is one of the many anomalies that are constantly being found in freight ratings.

Mr. Ransom, who appeared on behalf of the carriers, admitted that it was not practicable to load the minimum weights provided in Canadian Classification No. 16; but he argued that it was possible to load commercial poultry in L.P.T. cars at a minimum of 18,000 pounds, although exhibition poultry could not be so handled. He stated it was for this reason, among others, that a minimum of 18,000 pounds was provided in the proposed new Canadian Classification No. 17. This latter carries with it a 3rd-class rating—one class lower than in the official classification.

It having been admitted that the minima provided cannot be loaded, then, the question to be decided is whether the resultant carload rates obtained under this arrangement are fair and reasonable.

It was argued on behalf of the complainants that the shipping of live poultry, while only in its infancy in Canada, had been developed to a very large extent, and was a very important industry in the United States. It was contended that under the present Canadian classification rates the industry was being handicapped. That in order to develop this industry a change should be made in the classification both as to minima and rating.

Mr. Warrington in his letter of May 25, 1917, to the Board, states:—

“In the statistics of the great republic south of us, viz., the United States, the poultry crop is only exceeded by one other kind of farm produce. If encouraged, the same conditions will be in our own Canada.”

Mr. Ramson, at pp. 5268-5269, vol. 275, of the evidence, gives as the total shipments for a period of one year the following; but states it might not include all movements to exhibitions, but as they would consist of high-class poultry, birds running from \$5 to \$25, he did not consider them as essential to the present argument:—

East of Port Arthur :

G. T. R. to Buffalo and points east.	19 cars.
M. C. R. to Buffalo and points east.	8 cars.
C. P. R. none, except what was handed them by I. C. R., for Boston and points east, mostly geese :	

Geese.	10 cars.
Turkeys.	1 car

A total of. 38 cars.

for United States, all of which would move under official classification, 18,000 pounds minimum and 2nd-class rate.

In Canadian territory :

C. N. R. to Winnipeg.	2 cars.
G. T. R. to Toronto.	1 car.
C. P. R. to Winnipeg.	7 cars.

A total of. 10 cars.

with one car of exhibition poultry to Calgary, all of which moved under the Canadian classification.

The following statement was filed with the Board, showing a comparison of rates and car earnings for live poultry and live stock in official classification territory; also a statement showing a comparison of earnings under official classification and present and proposed Canadian classification:—

MEMCRANDUM showing comparison of rates and car earnings of live poultry versus live stock in official classification territory.

CHICAGO TO DETROIT.

	C. L. Min weight. Lbs.	Rate Cents.	Earnings. \$ c.
Poultry.	18,000	33·6	60 48
Cattle.	21,000	16½	34 12
Hogs, D-D.	22,000	16½	36 30
Hogs, S-D.	17,000	18·7	31 79
Sheep, D-D.	18,000	16½	29 25
Sheep, S-D.	14,000	20·3	28 42

CHICAGO TO BUFFALO.

Poultry.	18,000	41	73 80
Cattle.	21,000	21½	44 63
Hogs, D-D.	22,000	24·4	53 68
Hogs, S-D.	17,000	21½	36 12
Sheep, D-D.	18,000	21½	38 25
Sheep, S-D.	14,000	26·6	37 24

CHICAGO TO NEW YORK.

Poultry.	18,000	79	142 20
Cattle.	21,000	38	79 80
Hogs, D-D.	22,000	38	83 60
Hogs, S-D.	17,000	43½	73 95
Sheep, D-D.	18,000	38	68 40
Sheep, S-D.	14,000	47½	66 50

Dealing first with the comparison between the live stock and live poultry earnings in official classification territory: While it may be noted that in all cases poultry earnings per car are higher than those of live stock, I think this is justified by a consideration of the importance of the economic position of the two classes—the very great difference in the tonnage moved, and the aggregate earnings obtained from live stock as compared with poultry. Under no possible conditions could a development take place that would materially change this relationship which is inherent to the nature of the traffic.

There is also another important difference, and one which is always given consideration in the making of a freight rate, viz., the reshipment of the finished product. Packing-house products bulk very large as a source of revenue to railways.

I do not think that any facts have been submitted that would justify the altering of the usual accepted meaning of the term “live stock” so as to include poultry for the purpose of rate making.

Now, as to the rate *per se*: By a reference to the table above it will be seen in every case that car revenue under the present Canadian classification is lower than that obtained under the official classification, so that the development in the United States, referred to by complainant, has taken place under a car rate higher than that complained against; and there is no justification for the complaint that Canadian poultry districts are handicapped by the present rate. A reference to the same table shows that the 10,000 pounds minimum asked for at 9th-class would produce an altogether inadequate remuneration.

I do not think, therefore, that the present rate has been shown to be unreasonable.

It may be that before a final decision is arrived at in regard to the minima for proposed Classification No. 17, a further consideration might be given to the question of a higher rate and lower minima. The preponderance of the evidence at the hearing being that under the practise prevailing in Canada where L.P.T. cars were not always available, it is impossible to load even 18,000 pounds in a car, the average loading being from 10,000 to 12,000 pounds.

I do not wish to be considered as endorsing the proposed rating in Classification No. 17, as this is not in issue in the present case.

OTTAWA, January 18, 1919.

The Deputy Chief Commissioner concurred.

The rates as asked for on the Belleville-Toronto movement would give earnings per loaded car mile of 10.6 cents; Sundridge-Toronto, of 7.6 cents; Brockville-Lindsay, of 7.7 cents; and Sarnia-Toronto, of 8.2 cents. These may be compared with the loaded car mile earnings for all freight in 1917 of 15.3 cents. The reduction in rate, and that is in effect what is asked for, has not been justified.

The Chief Commissioner concurred.

S. J. McL.

ORDER No. 28090.

In the matter of the application of J. H. Warrington, of Cornwall, Ont., and others, for a reduction in the class rating and the carload minimum weight on shipments of live poultry.

File No. 25672.24.

TUESDAY, the 11th day of February, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*A. S. GOODEVE, *Commissioner.*

Upon reading the application and what is alleged in support thereof, and on behalf of the Canadian Freight Association, and upon the report and recommendation of the Chief Traffic Clerk of the Board,—

It is ordered: That the application be, and it is hereby, dismissed.

W. B. NANTEL,
Deputy Chief Commissioner.

Re Thorold Interchange.

File 6713.38.

JUDGMENT.

MR. COMMISSIONER BOYCE:

The interchange was asked for, at various times, by the Board of Trade of Thorold, the town of Thorold, and the manufacturers located at or near Thorold, on the ground that this facility was rendered necessary by the increase of traffic. The application was at least once refused, on the ground that the traffic shown did not warrant this Board in ordering the interchange. Latterly the traffic has so greatly increased as to warrant it. It became, therefore, a necessary facility for the handling and carriage of traffic, the regulation of which is committed to this Board by the Railway Act.

It is true that both the railways affected (the G.T.R. and N. St. C. and T. Ry.) say that *they* do not want the interchange and, therefore, should not be called upon to bear the whole expense. But there is little reason in such contention. As a traffic facility the Board, after hearing, has now found it necessary and, as a traffic facility, has ordered its installation to serve the general traffic affected.

The question is raised as to whether any portion of the cost of the work should be borne by the municipality of the town of Thorold.

The municipality states its position, in a letter from its Toronto solicitors, to the Board, dated November 13, 1918, as follows:—

“Our client’s contention is that while the interchange is undoubtedly a benefit to the manufacturers in and about the town of Thorold, it was a necessity due to the increase of business, and therefore the municipality should not pay any portion of the cost.”

The railways, on the other hand, contend that as they did not want the interchange, and the town was party to the application for it, and consistently and persistently brought its necessity to the attention of the Board, the town should be saddled with a portion of the expense of the work, as a reward for its activity and progressive public spiritedness. If there be virtue in this claim, it would follow that if the town pointed out that a new station, or freight sheds, or the like, were necessary at Thorold, and became an applicant for such, the town should pay part of the cost

of its construction. And, it seems to me, that the town would be "interested or affected" (section 59, Railway Act) in just the same manner, and to the same extent, in the one as in the other.

It does not appear anywhere that the town is financially interested in any way in either of the railway companies affected by the work. Its "interest" (if that be an interest) is representative merely of its citizens, whose business would be facilitated and the prosperity of its community enhanced by the interchange in question.

How then is the town of Thorold "interested or affected" by the work made to appear to the Board to be necessary from a traffic point of view, not only locally but covering the whole area over which traffic would move to and from the town? It is difficult to see.

I have examined a number of decisions upon the question of the application of these words ("interested or affected by") and none of them go the length, or anywhere near the length, now contended for by the railways. I refer to: *G.T.R. v. Village of Cedar Dale*, 7 C.R.C., 73 (see remarks of the then Chief Commissioner, foot of page 77 and on p. 78); *G.T.R. v. Kingston, etc.*, 4 C.R.C., 102; 3 Ex. C.R. 349; *G.T.R. v. C.P.R.*, 6 C.R.C. 327; *C.P.R. Co. Cor. and Twp. of York*, 27 O.R., 559, 25 A.R., 61, 1 C.R.C., 30; *Ottawa Electric Ry. v. Ottawa*, 37 S.C.R., 354; *County of Carleton v. Ottawa*, 9 C.R.C., 154; *City of Toronto v. C.P.R.* (1908), A.C. 54; *Toronto Ry. Co. v. Toronto*, 53 S.C.R., 222; *Toronto v. G.T.R.*, 37 S.C.R., 232; *B.C. Electric Ry. Co. v. V. V. and E. Ry.* (1914), A.C. 1067.

In all the cases is involved the interest of the municipality in the protection at the crossings of its streets (a duty in which it is much more nearly concerned, (or interested) than in providing traffic facilities for the general commerce of the locality) but, in no case can I find authority for the proposition advanced here, and which we are asked to sanction.

If the town of Thorold contributes any proportion of the cost of the construction, is there not reason in the argument that, to the extent of its investment, the town should be proprietors in the interchange system and participate in its revenues—or, perhaps, become liable for its losses in the same proportion? But, the town probably has no power to invest the money of its ratepayers in any portion of a Dominion railway. Should it be compelled to do so by virtue of the authority of a Dominion Act? Or, again, would it be proper administration of such Dominion law to compel a provincial corporation to assess its ratepayers for a work in which that corporation has no commensurate interest? In the case of a siding, provision is made for reimbursement of contributors to cost on a wheelage basis. That provision does not seem practical here. If it were, it would not, in my opinion, overcome the difficulty in principle presented. These are questions germane to the question as to whether the town of Thorold is "interested or affected by" the work ordered.

I find nothing in the facts presented to warrant any finding that the town of Thorold, as a municipality, is "interested or affected by" the work, but is merely in the circumstances, before this Board as an advocate, much as is pointed out by the then Chief Commissioner, in *G.T.R. v. Cedar Dale*, 7 C.R.C. at pp. 77 and 78 (which was a crossing case) and, upon the evidence it appears clear, and I would find as a fact, that the town prosecuted this complaint only in its representative capacity, and not in pursuance of any duty cast upon it, or of any interest, as a municipal corporation, in the traffic facility which it insisted should be provided by the railways serving the town, to meet the increased demands of the railway traffic to and from said town, and in which traffic, as a municipality, it was not interested, nor, was it, as a municipality, affected by it.

I have not omitted to consider the Aurora case referred to by Mr. Chisholm. I have looked at the file and it would appear that the final order is still in abeyance. The disposition of this case cannot, therefore, be affected by that case, even if otherwise it were a precedent which should be here considereed.

I am of the opinion that no order should be made against the town of Thorold for contribution of any proportion of the cost of the work ordered, which I think should be borne equally by the two railways concerned.

OTTAWA, January 31, 1919.

Mr. Commissioner Goodeve concurred.

Complaint of the St. Lawrence Pulp & Lumber Corporation, Chandler, Que., against the freight rate asked by the C.P.R. Co. for transportation of rails to Vancouver from points taking the Montreal or Toronto rates.

File 28631.

JUDGMENT.

MR. COMMISSIONER McLEAN:

Early in 1918, negotiations began between the St. Lawrence Pulp & Lumber Corporation and Messrs. Evans, Coleman & Evans, of Vancouver, for the sale, by the former to the latter, of 1,000 gross tons of second-hand railway rails, said rails being at or near a point called Chandler, on the Quebec Oriental Railway.

The course of the negotiations is not quite clear. Apparently at first it was the intention of Evans, Coleman & Evans to take the rails f.o.b. either Chandler or Matapedia. Later an arrangement was made whereby the sale was f.o.b. Vancouver. It is alleged by the railway that the change as to conditions of sale arose out of the belief of the applicant company that it could make better rate adjustments. This is not material to the present application except in so far as it points out how it happens that rate quotations were asked for both by the purchaser and the seller.

Samewhere about January, 1918, Evans, Coleman & Evans made application to the Canadian Pacific Railway Company, through the western officials of that company, for a rate on rails from Chandler to Vancouver. The situation as set out in evidence by counsel for the Canadian Pacific Railway Company was as follows:—

“MR. FLINTOFF: A quotation was made on February 23 as follows: Arbitrary Chandler to Montreal, 5 cents per hundred pounds, equal to \$1.12 per gross ton, Montreal to Chicago, 8 cents per hundred pounds, equal to \$1.79 per gross ton, Chicago to Seattle, \$13 per gross ton, \$15.91. It was explained in making this quotation that the rate from Chicago to Seattle was likely to be advanced on March 15 to \$20.16 per gross ton, and the tariff was published on this understanding on March 9, providing for the \$14.79 rate from Montreal to expire April 9. That is the shortest time the rate could be put in for, thirty days.”

While reference is made above to Chandler, this is apparently an error for Matapedia. While there are references through the discussion to Chandler, the originating point, no rate quotation from that point is mentioned.

Following this, there was issued on March 5, 1918, Tariff No. X-2, C.R.C. No. 6, effective March 9, 1918. This was an all-rail special joint-freight tariff on second-hand iron or steel rails from points taking Toronto or Montreal rates to Vancouver, B.C. The rate from Montreal to Vancouver was \$14.79 per gross ton. The rate from Matapedia was built up by adding \$1.12 per gross ton. The tariff carried on its face a notation that the rates quoted therein would expire April 9, 1918, unless sooner cancelled, changed or extended.

While the rate was thus put in force effective March 9, it appears that the final arrangement as to the sale was not made until April 3. Under the agreement as entered into, the rails were to be shipped f.o.b. Vancouver. On account of adverse weather conditions which prevented the rails being taken up, the rails did not move until the latter part of April. The shipments were spread over May and June. The

rate as carried in Tariff X-2, C.R.C. No. 6 above referred to had thus expired by efflux of time before the movement began.

In the meantime, Mr. Blair, a representative of Evans, Coleman & Evans, had various interviews with the Canadian Pacific Railway Company regarding the rates. Mr. Blair was not present at the hearing. It was represented by the railway that the purchase of the rails by him was some time after April 5 (it will be noted there is conflict of dates, but this point is not material), and that he was aware on April 5 as to the fact that the rate was to increase, and that he was also aware of the limitation as to term of the tariff.

It is stated by the railway that explanation was given to him that an increased rate of \$20.16 per gross ton from Chicago to Seattle had in the meantime become effective. This rate had gone into force on March 15. It was explained that the rate from Matapedia would now have to be built up by adding the same differences as formerly to the Chicago-Seattle rate. It is represented that Mr. Blair stated he could not make use of the rails unless he could obtain a better price. However, one day after the expiration of Tariff X-2, a rate quotation was asked for. This is set out in the statement of counsel for the railway company at the hearing, as follows—

“On April 10, Mr. Ransom got a letter from Mr. Tiffin, of the Canadian Government Railways—he is the assistant general freight agent—stating, in part, as follows—

‘We are advised by Mr. Blair that he has purchased rails at Chandler and that shipments will commence moving within the next two weeks.

‘Will you please arrange to publish a through rate from Matapedia of \$23.07 per gross ton on rails and the same rate per net ton on fastenings, routed by C.G.R., Canadian Northern, Great Northern and Northern Pacific, also via Ste. Rosalie by the Canadian Pacific.’

“That rate was put into effect in Mr. Ransom’s tariff X-4, effective April 22, to expire June 30.”

The rate of \$23.07, is built up of the increased Chicago-Seattle rate of \$20.16, plus the Chicago-Montreal arbitrary of \$1.79, plus Montreal-Matapedia rate of \$1.12.

Mr. Iverson who appeared for the applicant stated that his transactions as to rate quotations had been with the Canadian Government Railways, and he says, in substance, that in figuring the price to Evans, Coleman & Evans he had figured on the rate as quoted under Tariff X-2, plus a possible advance of 15 per cent. This latter increase apparently had reference to the 15 per cent increase which became effective on March 15.

The result of the various delays above set out is that the shipments moved under a higher rate than was in contemplation at the time the original negotiations began. The applicant is asking for a ruling that the rates as charged, when the shipments moved, were excessive, unjust and discriminatory; and that a refund of the difference between the rate under Tariff X-2 and that under Tariff X-4 should be directed. Applicant asks for a refund of the excess over the rate effective April 3, 1918. This apparently earmarks in his recollection the date when the agreement with Evans, Coleman & Evans was made.

Mr. Iverson, who is traffic manager of the St. Lawrence Pulp & Lumber Corporation, a position which naturally gives an intimacy with the details of rates and significance of date limitations in tariffs which would not so readily occur to one less expert, says, in substance, that he had no notice or knowledge of the date limited in the tariff. The following discussion took place at the hearing—

“MR. FLINTOFF: There is just one question I would like to ask Mr. Iverson. At the time you made this sale on April 3, were you aware of this tariff that was in effect?

“MR. IVERSON: Yes sir.

"Mr. FLINTOFF: You knew that it expired April 9?

"Mr. IVERSON: Well, to be candid with you, I did not at the time. I called up to find what the rate was and I was told, but I was not told when it expired. As a matter of fact, I did not see a copy of the tariff until after it had expired, or until possibly a day or two before, but it was after the sale was made.

"Commissioner McLEAN: You made application to the Canadian Government Railway for the rate, didn't you?

"Mr. IVERSON: Yes.

"Commissioner McLEAN: Then the rate they quoted you was what?

"Mr. IVERSON: \$14.79 when I first took it up with them, when I first asked that rate.

Mr. HARDWELL: From where?

"Mr. IVERSON: From Montreal, plus \$1.12 from Matapedia.

"Commissioner McLEAN: Then did they subsequently advise you the rate was on a higher basis?

"Mr. IVERSON: Yes.

"Commissioner McLEAN: On what date did they tell you that?

"Mr. IVERSON: I think it was along about the time that tariff expired.

"Commissioner McLEAN: They told you then somewhere about April 9 that \$20.97 was the rate?

"Mr. IVERSON: I wouldn't be sure of the date.

Commissioner McLEAN: About that time approximately.

"Mr. IVERSON: Yes.

"Commissioner McLEAN: But if anything at all turns on notice, you knew before you made your shipment that \$20.97 was the rate?

"Mr. IVERSON: We knew then but the sale had already been made, and the sale was made delivered Vancouver. We could not very well refuse to ship the rails after having made a bona fide sale."

In so far as the matter of notice is relied on, or, putting it conversely, ignorance before the contract was entered into of the date limitation of the effective tariff, reference may be made to *Canadian Condensing Co. v. C.P.R. Co.*, 12 *Can. Ry. Cas.*, 1. There it was held that an erroneous assumption by the shipper as to minimum weights did not authorize the Board to make the refund asked for; and it was set out at p3-. "Had they not acted under a mere impression, but had looked up the tariff which the law compels to be kept and published at the Chesterville station, they would have at once ascertained the true facts and the error would not have followed." The burden is on the shipper to acquaint himself as to the tariff provisions.

Turning now to the question of the declaration asked for, it may be pointed out that where there is a conflict of rates and a question arises as to which rate is the legal one, the Board may, as in *The Stoy Case*, by declaratory Order state what is the rate properly applicable in respect of a past transaction.—*British American Oil Co., v Grand Trunk Ry. Co.*, 9 *C.R.C.*, 178.

No question is raised in the present application as to the rate attacked not having been legally in force.

A ruling that the rate as charged was unreasonable and discriminatory is asked for. In support of this contention, tabulations and comparisons referring to various other rates are submitted. Where a rate is attacked on the above grounds, the Board's powers are limited to declaring what is a reasonable or undiscriminatory rate for the future.

Complaint of F. L. Getzler re class rates on pig iron, Welland to Montreal Board's File 26848.

As developed in evidence, no further shipments are in contemplation. The following excerpt from the evidence is material::

"Commissioner McLEAN: Have you any other shipments of this type in mind, or does this just happen to be an occasional shipment?"

Mr. IVERSON: Those would be the only rails we have on hand.

"Commissioner McLEAN: So this is entirely a rate on a past transaction—you do not expect shipments in the future?"

"Mr. IVERSON: No future shipments."

Even where it is alleged there is a special contract for rates other than those set out in the lawfully existing tariff, the Board has no jurisdiction to enforce such special contract.

Re Basil H. Malaher's Complaint, 4th Report Board of Railway Commissioners for Canada, 1909, p. 238.

In the present instance it is sought to make a rate which had expired a measure of a refund asked for in respect of a shipment moving under a higher rate. It was frankly admitted that what was desired was a ruling simply for the purpose of obtaining a refund.

The Board has no jurisdiction under the Railway Act to direct that a refund shall be made. This was pointed out to the applicant during the hearing. It was then suggested by him that if a ruling such as was asked for by him were given, it might be possible to recover the excess by action through the Courts. In *British American Oil Co. v. Canadian Pacific Ry. Co.*, 12 C.R.C., 327, at p. 333, the Board said: "Of course the Board has no power to order any refund. It can only declare what the lawful rate was or should have been, and the parties are left to whatever redress they may be entitled to consequent upon that declaration."

As already indicated, there is nothing before the Board in the present instance on which a declaratory order such as is asked for can be issued.

February 5, 1919.

The Deputy Chief Commissioner and Commissioner Boyce concurred.

ORDER No. 28111.

In the matter of the complaint of the St. Lawrence Pulp and Lumber Corporation, hereinafter called the "complainant," against the rate of \$23.07 per gross ton on second-hand rails from Matapedia, Que., to Vancouver, B.C., published in Canadian Freight Association Tariff C.R.C. No. 12, effective April 22, 1918, as excessive and unjust, and requesting reparation on shipments made subsequent to April 9, 1918, to the basis of the rate of \$14.79 per gross ton from Montreal to Vancouver, published in the Canadian Freight Association Tariff C.R.C. No. 6, effective March 9, 1918, expiring April 9, 1918, with the addition of the customary arbitrary of \$1.12 per gross ton from Matapedia to Montreal.

File No. 28631.

TUESDAY, the 18th day of February, A.D. 1919.

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the complaint at the sittings of the Board held in Ottawa, December 17, 1918, in the presence of counsel for the Canadian Pacific and the Grand

Trunk Railway Companies, the complainant being represented at the hearing, and what was alleged; and upon reading the further written submissions filed on behalf of the Canadian Pacific Railway Company,—

It is ordered: That the complaint be, and it is hereby, dismissed.

W. B. NANTEL,
Deputy Chief Commissioner.

Application of Madame Napoleon Bessette, Roxton Falls, Que., for an order of the Board directing the removal of a stock pen erected in close proximity to her dwelling, on the line of the Canadian Pacific Railway.

File No. 28734.

JUDGMENT.

The DEPUTY CHIEF COMMISSIONER:

The applicant complains that the Canadian Pacific Railway Company has erected for its use, within the limits of the village of Roxton Falls, and too close to the house which she occupies, a stockyard where cattle are loaded to be shipped from Roxton Falls and the surrounding country; that the cattle are kept there for a longer time than they should be, and that this constitutes a public nuisance which has depreciated her property. She asks that the company change the location of their stockyard, and thereby remove the nuisance.

The complainant was the owner of her property before the railway located there and erected the stockyard that has become the cause of the complaint.

The complainant has substantially established the facts of her case, that is to say, although the cattle yard is at present kept cleaner and in better order, it nevertheless is the cause of much annoyance to her, if not a public nuisance which has considerably depreciated the value of her property.

The first question which arises is: Has the Board jurisdiction? The powers of the Board are strictly limited by the Act. Sections 26 and 284 were quoted, but they, nor any other of the Act, give the Board jurisdiction in this matter. The Board has power to enforce the provisions of the Railway Act, but has no jurisdiction to interfere generally when a company violates another Act, or the common law. It does not supplant any of the provincial tribunals.

The complainant has several means to obtain redress and protect herself. She can have the provisions of the municipal by-law of Roxton Falls, passed in connection with the cattle yard in question, enforced—she may apply to the Provincial Board of Health, or the municipal authorities—she can file a suit for damages before the civil courts, or some such similar proceeding in order to force the company to remove the source of injury.

The Board, not having jurisdiction in this matter, cannot, therefore, interfere.

OTTAWA, February 5, 1919.

The CHIEF COMMISSIONER:

I agree with the conclusions, that the Board cannot make the order desired, arrived at by Hon. Mr. Nantel, Deputy Chief Commissioner.

Stock pens are a necessary railway facility; if not supplied by the company their installation may be ordered by the Board. A comparatively large collection of animals is in every instance necessary. Shippers require to transport their stock in carload lots and the animals have to be held in the usual pen awaiting transportation. Of necessity, the collection of a carload of animals must be accompanied with some unpleasant odours and with some noise. The stock pen in question has been constructed and used some thirty years. Mrs. Bessette, the complainant, moved to the

home in which she now lives some six years ago. Her house is undoubtedly close to the stock pen, being only some twenty or twenty-five feet from it. By reason of the proximity of her home she doubtless suffers more from the pen than the other residents of Roxton Falls do. It is charged that the pen constitutes a public nuisance. In support of this complaint special allegations are made of smell and noise. The evidence called by the complainant, however, falls far short of showing that the pen is not properly kept, or that the annoyance resulting from this is unnecessarily great. The evidence is to the contrary.

Dr. Henri Samson is not only a practising physician but is an officer of the Board of Health of the province of Quebec, and when called by the complainant he stated that the yard should be cleaned out twenty-four hours after departure of animals; that according to his information it had been cleaned, and that when he was there he noticed no smell, the yard being clean at the time of his visit.

Dr. Baudry, who is General Inspector of the Board of Health of the province of Quebec, has inspected the pen five or six times. In his view stockyards are always naturally nuisances. When asked how this stockyard compared with others, he stated that it was exactly the same, they were all nuisances.

Mr. George Levesque, notary, of Roxton Falls, stated that since complaint was made conditions were greatly ameliorated; that for the past two years the stockyard had been much improved.

The inspection made by the Board corroborates complainant's evidence, and shows that the stock pen is clean and well kept.

On the question of special damages it may be noted that on the evidence of George Levesque, complainant does not own the property she occupies, it belongs to her niece, that she became a tenant some six years ago and that the manner in which the stock pen is maintained has since improved. Special damage as to depreciated value of the property would appear to be a matter that the owner was more interested in than the tenant. Again on special damage, it is shown that the complainant's daughter is an invalid suffering from indigestion. No witness called ventured to assert that the cattle pen was the direct and only cause of this complaint.

The witness, Louis Tranchemontagne, shows that the local municipality is anxious that the stock pen remain where it is, and that as a result of a conference which took place between the municipality and the railway company certain improvements were made. The municipality, which it is shown under the laws of the province of Quebec has jurisdiction in the premises, suspended the operation of its by-law requiring the removal of the pen.

Even had a sufficient case been made out, the Board is without jurisdiction to make the order desired. Counsel for complainant relies on section 26, subsection 2, of the Act, and on section 284.

Section 284 is the section which deals with accommodation for traffic. Undoubtedly under this section the Board could have ordered the construction of a stock pen at Roxton Falls. There is nothing in the section, however, which enables the Board to deal with any grievance which was not related to the demands and requirements of traffic. Section 26, subsection 2, merely allows the Board to compel to be done any act, matter or thing which the company is required or authorized to do under the Act (or the special Act), and to restrain any act, matter or thing which is contrary to the Act (or the special Act). No provision either of the Act or the Canadian Pacific Special Act, has any bearing whatever upon the present complaint. This section, therefore, again confers no jurisdiction herein. The jurisdiction of the Board ought not to be strained. Issues between the railways and individuals, apart from the questions of traffic, rates, etc., are not taken from the appropriate tribunal and vested in the Board. The question of local nuisances would in particular seem to be one which ought to be left in the hands of the appropriate local authority. The Board ought not in any event to interfere.

Reference was made to the case of *Bennett vs. Grand Trunk et al.*, 1 C.R.C., 451, 2 O.L.R., 425. That case is very similar to this. The plaintiff was the owner and

occupier of a house and lot in St. Thomas. The railways moved large shipments of hogs through the city and fed them in enclosures near the plaintiff's house, thereby causing the air to be polluted with a noxious smell, making the plaintiff's premises very disagreeable and inconvenient and rendering the house unwholesome and uncomfortable.

It was there held that when the railways in the proper exercise of their powers have created a nuisance, and it is not by the improper exercise of their powers that it has been created, and the railways have used their best endeavours to make the nuisance as small as possible, that no action lies.

The complaint is dismissed.

February 10, 1919.

Commissioner McLean concurred.

ORDER No. 28112.

In the matter of the application of Madame Napoleon Bessette, of Roxton Falls, Que., hereinafter called the "complainant," for an Order directing the Canadian Pacific Railway Company to remove the stock-pen erected in close proximity to her dwelling on the line of the Canadian Pacific Railway Company.

File No. 28734.

FRIDAY, the 21st day of February, A.D. 1919.

HON. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

Upon hearing the complaint at a sittings of the Board held in Montreal, January 16, 1919, in the presence of counsel for the Canadian Pacific Railway Company, the complainant appearing in person, the evidence offered, and what was alleged; and upon the report of an engineer of the Board; and its appearing that the Board is without jurisdiction to make the Order applied for,—

It is ordered: That the complaint be, and it is hereby, dismissed.

W. B. NANTEL,
Deputy Chief Commissioner.

Applications of the Westboro Police village and the township of Nepean for an Order disallowing the proposed tariff of the Ottawa Electric Railway Company, C.R.C. No. 5, published and filed to become effective November 18, 1918.

Case No. 2987.

JUDGMENT.

The CHIEF COMMISSIONER:

These applications were heard jointly at sessions of the Board held in Ottawa on November 18, 1918, and on December 2, 1918. At the close of the hearings further statistics were to be filed. These statistics have since been filed, and the matter is now ripe for adjudication.

At the hearings the city of Ottawa intervened, as well as certain property owners, in support of the applications of Westboro and Nepean for the disallowance of the tariff.

The tariff complained of provides, *inter alia*, for fares on the following basis:—

CASH FARES.

Between the hours of 6 a.m. and 12, midnight.

	Adults.	*Children.
Within zone 1, 2, 3 or 4	5 cents.	3 cents.
Between zone 1 and zone 2 or 3.	10 "	6 "
" zone 1 and zone 4.	15 "	9 "
" zone 2 and zone 3.	15 "	9 "
" zone 2 and zone 4.	10 "	6 "
" zone 3 and zone 4.	20 "	12 "

Between the hours of 12 midnight and 5.30 a.m., double the above fares

* This rate applies for children under ten years of age.

SPECIAL TICKETS.

Between zone 1 and zone 2 or 3.	3 tickets, 25 cents.
" zone 1 and zone 4.	2 " 25 "
<i>Workman's—</i>	
Good only within zone 1 from first morning trip until 7.30 a.m., and between 5 p.m. and 6.30 p.m.—	
Thirty-three tickets.	\$1 00
Eight tickets.	0 25
<i>School Children (under 14 years of age)—</i>	
Good only between the hours of 7 a.m. and 9.30 a.m.; 11.30 a.m. and 1.30 p.m., and 3.30 and 5 p.m.	
Forty tickets.	1 00
One ticket for each zone travelled.	
<i>Sunday—</i>	
Seven tickets.	0 25
One ticket for each zone travelled.	

Issued at Ottawa, Ont.

October 26, 1918.

The limits of the zones provided are as follows:—

- Zone 1—Within the municipal limits of the city of Ottawa and beyond to the Experimental Farm and to Cloverdale avenue on the Rockcliffe line.
- Zone 2—West of zone 1 to and including McKellar.
- Zone 3—East of Cloverdale avenue to and including Rockcliffe Rifle Range.
- Zone 4—West of McKellar to and including Britannia-on-the-Bay.

This tariff was suspended by the Order of the Board No. 27830, and the old tariff still remains in force and effect.

The new tariff would radically change the fare basis. As matters now stand, to give an extreme illustration, a passenger is carried from Britannia-on-the-Bay to the Rifle Range, involving a movement of 11.70 miles, for a fare of five cents. It is obvious that if the company were operating only for such a distance and at such a rate, its operation could not continue—the return is not compensatory, the actual cost of operation is much greater. On the other hand, under the company's proposal, for the same trip a fare of twenty cents would have to be paid. The increase is 300 per cent.

The old rate, approximating 0.43 cents a mile, becomes approximately 1.71 cents. This again, heavy as the increase is, would be well below the recognized standard mileage rates were this company a radial company and not really an urban system with feeders.

Another movement, not so extreme but still long, is that from Britannia-on-the-Bay to the corner of Rideau and Charlotte streets, a distance of 8.68 miles. Under the proposed tariff the old rate of 5 cents now applicable would become fifteen cents, and the return per mile of 0.576 cents becomes increased to 1.72 cents.

The company has filed statements which clearly establish that the operation of the extension to Britannia, standing by itself, is not remunerative. If the operation of this line can be so considered, it is clear that the company is entitled to an increased remuneration for the service it performs on it. The determination of this issue is attended with difficulty.

The company operates in Ottawa under the agreement with the city dated June 28, 1893. The company's franchise expires August 13, 1923. The rates which the company desires to put into effect in each zone are the rates reserved by the agreement. Paragraph 46 of the agreement reads:—

“46. No higher fare than five cents shall be charged for the conveyance of one passenger from one point to another on the said line and branches thereof within the present city limits, and for children under ten years of age no higher fare than three cents shall be charged except between the hours of twelve o'clock midnight and five-thirty a.m.”

It will be observed that the contractual fare limitation applies merely to the limits of Ottawa as then constituted. Ottawa's boundaries in 1893 were, on the east, at the material point, namely, on the line running to the rifle range—Riverside terrace, the city limits practically ending with the grounds of Government House, Lisgar road, and Maple lane. These easterly boundaries have not been extended.

The other material boundary is to the west. Along the line of Somerset street where the cars run this boundary was Bayswater avenue, the general western boundary being the right of way of the Canadian Pacific Railway Company up to Somerset street, when a jog was made to the west and the line continued up Bayview road north.

On July 27, 1907, the city's western boundary south of the Grand Trunk line and north of Caroline avenue was extended to Holland avenue. On December 19 of the same year the city was again extended to the north of the Grand Trunk Railway and south of Scott street to the present westerly city limit. The route to Britannia ran through the territory covered by this annexation. The new western city boundary resulting from this annexation is described in the evidence as the division line between lots 33 and 34 in the first concession, Ottawa front, of the township of Nepean, along the company's line to Britannia. This new boundary is some 2,000 feet west of Holland avenue. The city's westerly boundary was squared off by the annexation of February 4, 1909, which extended part of the city lying north of Caroline avenue and south of the Grand Trunk tracks to the prolongation of the westerly boundary of the territory annexed December 19, 1907.

The section of the Ottawa agreement above set out, confined as it is to the old city boundaries, does not apply to the territory covered by these annexations.

The company in a further agreement of April 8, 1895, made with the city, contracted to build, equip, and operate the line to the Experimental Farm. The resolution of the City Council of April 1, 1895, adopted by the agreement and referring to the branch to the Experimental Farm, reads:—

“2. That the company be bound to have a line of railway fully equipped and in operation from the city to the Experimental Farm, before the end of the present year (1895), and that the company be allowed to charge only city rates for any passenger from any point within the city limits to the Experimental Farm (or any intermediate point), and the same rates from the Farm (or any intermediate point) to any part of the city.”

The route to the Farm as provided in the agreement relating to it was not followed, and the line as to-day operated to the Experimental Farm runs from the Britannia line south along Holland avenue to and along Carling avenue, and thence to the Experimental Farm.

The company does not seek to raise its rates to the Experimental Farm; it is included in zone 1, the company admitting that the rates of fare are governed by agreement, and are not sought to be advanced.

In like manner the territory annexed December 16, 1907, which consisted of the former village of Hintonburg, is, as far west as Holland avenue, included in the same zone. Here again rates are covered by the agreement of May 11, 1895, the company's agreement with Hintonburg containing the following provision:—

“37. No higher fare than five cents shall be charged for the conveyance of one passenger from one point to another on the said line and branches thereof within the present and any future limits of the village of Hintonburg, and from thence to any point within the present limits of the city of Ottawa or to the Experimental Farm, and for children under ten years of age no higher fare than three cents shall be charged, except between the hours of 12 o'clock midnight and 5.30 a.m.”

The principle on which the company has constructed its first zone makes it applicable not only to Ottawa as constituted in 1903, but as extended on the east to Cloverdale and on the west through the former municipality of Hintonburg to Holland avenue. I am of the opinion that this zone in any event cannot stop at Holland avenue. On the other hand, it must be continued to the present existing city limit.

The company's agreement with Hintonburg limits the rate to five cents, not only within present and future limits of the village, but from it to any point within the then (1907) limits of the city of Ottawa, or to the Experimental Farm.

Hintonburg was to get Ottawa rates. On the evidence Hintonburg's westerly limit was not Holland avenue; but was the division line which now constitutes the westerly city limit already described.

In any event, bound as the company is by its Hintonburg agreement, zone 1 ought to extend to the present westerly city limit, which coincides, as stated, with the limit of the old municipality of Hintonburg.

It is clear that the company's operations to the rifle range on the east, past the easterly city limit, and to Britannia on the west, past the westerly city limit, are not in any way bound by municipal agreements, and are not subject to municipal rate limitations.

Mr. Proctor, who appeared for Ottawa, urged that as the company's general operations showed a good return, that notwithstanding the loss on the extensions the Board ought to level up rates having regard, doubtless, to expenses on the one hand and profits on the other; and that when increasing fares on the extensions the city rates should be reduced to a more reasonable basis.

Such action is not open to the Board. The city, as well as the company, is bound by the agreement. In my opinion, Mr. Proctor's argument that the effect of the municipal agreement is only to provide that the company cannot charge more than a certain amount, and that the Board can reduce it, is not tenable.

The municipality and the company agreed that rates should not be higher than the amount stipulated. As between the city and the company rates within the amount stipulated are accepted, and are just and reasonable. The company has the right to charge them.

Following the Board's practice, notwithstanding the city's agreement, on a proper case being made out for reduction, generally speaking, the Board's jurisdiction would enable it to reduce the rate. The scheme of the Act is that rates shall be just and reasonable, and if under an agreement the carrier is getting more than a reasonable rate, beyond question the Board ought to reduce that rate; and, conversely, if the agreement has not reserved a rate just and reasonable, and discrimination has resulted, it is the duty of the Board to increase it.

While, therefore, under the general rule, effect could be given to Mr. Proctor's contention, no such action can here be taken because the Dominion Parliament, whose legislation absolutely binds the Board, has confirmed the agreement. Section 2 of the Dominion Act of 1894 provides: “The agreement between the said companies and the corporation of the city of Ottawa, bearing date the 28th day of June, A.D. 1893, and set out in schedule ‘B’ to this Act, is hereby ratified and confirmed.”

The Board's general jurisdiction is bound by this special Act. The same question was considered by the Board having reference to the Crow's Nest Pass agreement in the Increase in Passenger and Freight Tolls Case, reported in 22 Can. Ry. Cas. 49. Similar effect was given to municipal agreements in *Hamilton Radial Electric Co. v. Hamilton et al*, 23 Can. Ry. Cas. 114.

I now deal with the Britannia-on-the-Bay service. The evidence shows that this line commenced its operations May 24, 1900; that the company charged an extra fare beyond Holland avenue for three or four years; and that the company then exacted the extra fare only for the winter months, and in 1908 abandoned the extra fare altogether.

Operations have since been carried on subject to the company's general tariff applicable to Ottawa.

The extension to Britannia was authorized by the Dominion Act of 1899, chapter 82. The Act provides that the company may, as an extension of its present railway, construct and operate a railway from some point on its present railway in Hintonburg or Nepean to some point at or near Bells Corners, in the township of Nepean.

Mr. Proctor contends that the operation of this line is purely optional on the company, and that as it is optional, the company are not in a position to come to the Board for relief; that the Company is not in a position to say that service must be given, and that the Board should, therefore, allow a just and compensatory rate.

If this principle be adopted the result would be that when the line would be remunerative, that is, during the summer months, a service would be given and no service at all in the spring, autumn, or winter months. While this result would work little or no inconvenience to those living in Ottawa, who would be able to get out to the Britannia summer resort when they desired to go, for the single-fare, it would work a direct hardship on all residents on the line, Westboro and west. Relatively, a very considerable population (although insufficient to support the car service at the present rates), is served the whole year round by the line. Its operations ought to continue.

The wording of the Act, as I view it, does not relieve the company from its duty to operate. The wording is usual. No Railway Act of incorporation provides that the railway shall be built. Permission is simply given to build and operate, but when once the line is built and the company is solvent and can operate, the statutory duty to operate applies.

In any event, if the line is not to be run regularly and with a proper service, the only alternative would be its complete abandonment and removal. No railway company should be permitted to operate a line for a given short period of the year only and decline to operate it for the remainder when against public interest.

Rates of fare not being determined, it becomes necessary to ascertain the company's position having regard to Dominion control. The company's original incorporation is an Act of the old province of Canada, being chapter 16 of the Acts of 1866. No reference is made in the statute to any regulative tribunal or general Act, but the directors of the company are given power and authority to "make, amend, and repeal, and re-enact all such by-laws, rules, resolutions, and regulations as shall appear to them proper and necessary touching . . . the fares to be received for passengers and freight transported over the railway, or any part thereof, the intervals of time in running each car, the time within which, on each day, the cars shall be run, the speed of running the same"

The railway at this time being entirely local, jurisdiction over it after Confederation rested in the local legislature, and that legislature amended the Act of incorporation by its Statute, chapter 45, enacted in the year 1868. Under this Act a number of clauses of the Railway Act of the old Province of Canada were made applicable. No clause made applicable, however, covers the regulation of fares and tolls.

The measure of public control over railway fares provided by the Railway Act in force at the time of the company's incorporation, and when this amending Act was

enacted, and being chapter 66 of the Consolidated Statutes of Canada, 1859, is contained in the following provisions:—

“118. The legislature of this province may from time to time reduce the tolls upon the railway, but not without consent of the company, or so as to produce less than fifteen per cent per annum profit on the capital actually expended in its construction; nor unless, on an examination made by the Commissioners of Public Works of the amount received and expended by the company, the net income from all sources, for the year then last passed, is found to have exceeded fifteen per cent upon the capital so actually expended.”

“151. The by-laws of every railroad company regulating the tolls to be taken on such road, in the special Act respecting which a provision has been inserted that such railroad should be subject to the provisions of any general Act relating to railroads, shall be subject to the approval of the Governor in Council, and no by-law of any railroad or railway company in this province by which any tolls are to be imposed or altered, or by which any party other than the members, officers, and servants of the company are intended to be bound, shall have any force or effect until the same has been approved and sanctioned by the Governor in Council.”

As already pointed out, sections of the Railway Act incorporated do not include the above provisions. On the other hand, they are expressly excluded, the special Act providing that no other clause, except the clauses mentioned, shall apply.

As a result, under the two special Acts of 1866 and 1868, the whole question of fares to be charged for both passengers and freight transported was left to the regulation of the directors' by-laws. No parliamentary or other public regulation was provided.

In 1892, the company contemplating its extension across the river into Hull, an Act was passed by the Dominion Parliament, chapter 53. The Act contains the declaration to the effect that the undertaking of the company is declared to be a work for the general advantage of Canada. The usual effect of the declaration is to give the Parliament of Canada full jurisdiction over the company and its undertaking, and to make the Dominion Railway Act in its entirety applicable. This result is, however, qualified by a provision that “the operation of so much of the company's line of railway as may be within the province of Ontario by any new or additional powers covered by this Act, shall be subject to the Statutes of Ontario in force from time to time in relation to street railways, and the operation of so much of the said line of railway as may be within the province of Quebec by any new or additional powers conferred by this Act, shall be subject to the Statutes of Quebec in force from time to time in relation to street railways.”

This Act again makes specific sections of the Railway Act applicable. In view of the well-known effect of the declaration of the general advantage of Canada it is difficult to account for this action, unless the incorporators desired the specific reference or the intention was to exclude the company and railway from unnamed sections and among others the sections empowering the Board to regulate fares.

Any doubt, however, which might arise as to whether or not the Board had jurisdiction under the Railway Act to regulate the company's tolls was removed by the subsequent Act of the Dominion, chapter 86 of the Statutes passed in the year 1894. Section 7 of this Act declares the company's lines to be works for the general advantage of Canada, and the Ottawa Electric Railway Company to be a body corporate subject to the legislative authority of the Parliament of Canada. This absolute declaration would also appear inconsistent with the exceptions reserved in favour of provincial jurisdiction in the Statute of 1892.

A further Act of the Dominion, however, chapter 82 of the Statutes of 1899, was also passed on the company's petition, this Act being the Act already referred to as authorizing the construction of the Britannia line. For some reason which is not

at the moment apparent, again, certain sections of the Act were made specifically applicable. Section 3 of the Statute reading:—

“Sections 90 to 172, both inclusive, of the Railway Act, and such of the other sections of the said Act as are applicable, shall apply to the company with respect to the said extension.”

In view of the declaration contained in the Act of 1894, the company in all its operations was subject to the provisions of the Railway Act. The provisions of the Act of 1899 making specific sections of the Act applicable does not of necessity, in view of the circumstances, relieve the company from the operation of the Act generally. The promoters of the legislation may have desired and Parliament may have enacted the specific sections merely for greater certainty. The Board ought not to find the provisions of the Act of 1894 repealed by implication without some very strong reason. The apparent inconsistency now considered in my opinion is not sufficient.

Section 5 is of special importance in that Parliament thereby recognizes as continuing the provisions of the Act of 1892 and which reserves a limited provincial control. In 1899, Parliament thus treats as existing, and legislates on the supposition, rights reserved to the provinces by the Act of 1892.

I am of the opinion that all these special Acts have to be read together, and that they should be so read as to give effect, where possible, to the provisions of all. I, therefore, find that the company is under the control of Parliament and subject to the provisions of the Railway Act, subject to the exception made in the Statutes of 1892.

The result, therefore, is that the actual operation of the company's line in Ontario, by any new or additional powers conferred by the Act of 1892, is subject to the Statutes of Ontario in force, from time to time, in relation to street railways.

The new and additional power granted by this Act, and having reference to operation, is the authority which has since been exercised by the company to operate the railway by the force and power of electricity.

As a result, subject to the modifications worked by the Dominion Acts of 1892 and 1899, the company and its railway, apart from the electrical operation, are subject to the jurisdiction of the Board, and the electrical operation of the railway only is subject to provincial law.

As a result I find that the Board is properly seized of the present case.

Under the Railway Act the same company may have different rates on different parts of its system where traffic and operating conditions and construction costs are dissimilar, for example, railway tolls are justifiably higher in a mountainous district where cuttings and grades are heavy and as a result the cost of construction and operation is greater than in other districts. Again, the tolls may be greater where traffic density and diversity differ.

Rates on a branch or lateral line may be justified, although higher than those of a main line, with greater traffic and although owned by the same company. *Almonte Knitting Co. v. C.P.R. and M.C.R.R.*, 3 *Can. Ry. Cas.*, 441.

These considerations apply to railways which give a measured service and receive a measured rate reasonable and just for the service rendered. No case has heretofore arisen requiring consideration as to whether or not such principles can be applied to a city street railway, although possessing an outside feeder, and which does not give a measured service for a measured rate, but on the other hand applies a flat rate to all using its facilities and without regard to the actual value of the service rendered for which a particular fare is paid.

The conditions applying to the tolls and tariffs of the railway systems of the character contemplated by the Railway Act, and considered in the Board's past decisions, are so different to the conditions surrounding the operation of the Ottawa Electric Railway that previous decisions of the Board are easily distinguishable.

In the case of a measured service, finding as I do that the service on the branch line of itself is not at the present remunerative, the company's other tolls would in such case be subject to reduction in case the revenues of the branch were increased and the company's general revenue from transportation greater than it ought to enjoy.

The Britannia line forms part of the company's general investment. As previously stated, the line was constructed in 1899 and operated on and after May 24, 1900.

In 1899, the company's capital was \$814,000, its funded debt \$310,000, and its current liabilities \$107,553. In 1900, while the capital was the same, the funded debt was increased to \$500,000 and current liabilities reduced to \$50,436. In the absence of exact information on the point it would appear that the construction of the line was financed, at least in part, by the addition of the funded debt. The stock issue and funded debt remained constant until 1903, at which time the capital was increased to \$995,700 and the current liabilities reduced to \$33,601. In 1905 the capital issue was again increased, amounting, as it then did, to \$998,200, while the current liabilities amounted to \$120,566. In 1908 the capital was increased to \$1,247,700, and the current liabilities then amounted to \$210,394. In 1912 the capital had increased to \$1,876,900, and the current liabilities were \$136,909. The funded debt still remained at \$500,000.

It will be observed that the construction of the Britannia line caused no particular change in the capital account, but that account has varied quite as sharply as when the line was built. The investment became and is part and parcel of the company's general investment in its transportation undertaking.

The company in support of its application shows that, in view of greatly increased cost of operation, conditions have changed and urges that increased fares have become necessary.

Undoubtedly all costs have greatly risen. War conditions have brought about abnormal conditions. Transportation companies have been injuriously affected to a very marked degree. The Ottawa Electric has suffered from general increased costs in common with other companies and business concerns. Some of these increased costs at any rate were more marked during the period of active hostilities than they are to-day. I now consider the effect of the active war period on the company.

The year ending June 30, 1913 (the date as of which the company has to make its statutory return), may, as I think, be looked upon as normal. The last return made to the department is for the year ending June 30, 1918. A perusal of the reports filed with the department shows that during this period the company has maintained its position having regard to both its balances and dividend payments. While there has been no new issue of stock, the mileage operated has increased from 47.7 miles to 52.82 miles.

The funded debt in 1913 amounted to \$500,000; in 1918 it had been reduced to \$410,000. In 1913 the company's reserves amounted to \$210,000; in 1918 they were \$558,076. As against this the company's current liabilities in 1913 of \$520 grew to \$400,056 in 1918. This increase in current liabilities, in the absence of any increase in funded debt or capital, may well be accounted for by the fact that the company's return of cash spent in construction and equipment, less deductions, which it made in 1913, amounted to \$2,725,778, while the total return in 1918 had increased to \$3,370,368, an increase of \$644,590. In the year 1913 the company commenced its operations with a surplus of \$203,500, and after paying the usual dividends and interest, as well as the sum of \$69,000 transferred to contingent account, increased its surplus by the sum of \$13,259.

In 1918 the year's operations commenced with a surplus of \$47,589. The company pays the usual dividends and its interest charges, and transfers \$110,000 to depreciation reserve, but decreases the surplus it commenced the year with by the sum of \$29,929.

The results of the respective years' business differ but slightly. In so far as surpluses are concerned, 1913 has the advantage to the extent of \$43,188, while in 1918 transfers to other accounts exceeded 1913 by \$41,000.

In so far as the company's balance sheet is concerned, admittedly an increased floating debt has the drawbacks inherent to such liabilities. Nevertheless, the railway property operated has increased over 10 per cent. The funded debt has decreased \$90,000; the reserve, apart from any consideration of specific depreciation reserves or the contingent account, has increased \$348,076.

On the other hand, the increase in current liabilities is \$399,536, and the surplus remaining on hand at the end of the year has decreased \$186,831.

To recapitulate, the company's returns support the following conclusions as to changes worked in the company's position between 1913 and 1918:—

<i>Cr.</i>	
Decrease in funded debt.	\$ 90,000
Increase in reserve or surplus.	348,076
" construction and equipment account.	644,590
	<hr/>
	\$1,082,666
<i>Dr.</i>	
Increase in current liabilities.	\$ 399,536
Decrease in yearly balance.	186,831
To balance.	496,299
	<hr/>
	\$1,082,666

In other words, after maintaining a 15 per cent dividend and all interest on its funded debt, the company's returns show it to be \$496,299 better off on June 30, 1918, than it was before the war.

Another method of estimating the company's prosperity is that afforded by the operating ratio, which expresses the percentage of operating expenses to receipts. The company's annual reports to its shareholders gives the operating ratio for the year ending December 31, 1899, at 57 per cent. The same return is made for the ensuing year, 1900, but as at this time a special charge was made for the Britannia service the effect of the Britannia operation without the payment of fares cannot be illustrated.

For the year ending 1901, with fares charged on the Britannia line, a percentage of 63 per cent is shown, dropping to 60 per cent in 1902, and in 1904 rising again to 62 per cent. It was about this period that the company on the Britannia line carried passengers without an extra fare during the summer.

For the year 1905 the ratio was shown as 59½ per cent. For the year ending 1907 the rate was 59½ per cent. Some time in 1908 (the exact date was not shown) the company ceased making any extra charge on the Britannia line. The operating ratio of 1908 is 66⅔ per cent; in 1909, 63¼ per cent; in 1912, 57½ per cent; in 1913, 60⅔ per cent; and for the year ending 1917 the operating ratio had dropped to 56½ per cent.

The company, however, since the last return was made to the Government, has been obliged to make a large increase in its wage account. The evidence shows that the wage increase calculated on the actual payments for September and October, 1918, and compared with the same months of 1917, amounts to an increase of 28 per cent, while the total expenses showed an increase of 30 per cent. It is, of course, impossible to deny the grave effect of the increase, but the company is, on the other hand, in receipt of increased revenues. It no longer sells 6 tickets for 25 cents. As a result of the change in the rate basis, which under its contract the company was able to make, the average fare paid per passenger has increased from 4.19 cents to 4.71 cents, an increase of 0.52 per cent.

If the company's volume of traffic is maintained this increased revenue will go a long way in recouping increased expenses.

The return of September and October is undoubtedly disappointing, but these months cannot be considered characteristic—the influenza epidemic was then at its

height—not only were many people ill and unable to be about, but those who could were urged to keep out of street cars and all crowded places.

Much has been said of the London and Port Stanley and the Hull Electric cases. They do not apply. The circumstances were and are entirely different to those of this case. London was netting less than 2 per cent on its original investment and the Hull Company operating without profit.

It is undoubtedly in the public interest that railway companies should be prosperous and their operation remunerative. With impoverished companies, service always suffers, and the rails, rolling stock, and equipment rapidly deteriorate. Happily, in the present case, the company has been and is prosperous, and well managed—the plant well maintained, and perhaps the best service in the country afforded. All of this is in the best interest of the public; it is also in the best interest of the company, whose careful and efficient management has resulted in large dividend earnings, as well as a proper service.

As a result of the view I take of the general issue, it is unnecessary to discuss the line to the rifle range in any detail.

It is hoped and expected by many that costs will shortly decrease. However this may be, the company has failed to show that it requires increased revenues. I would disallow the suspended tariff.

February 10, 1919.

The Deputy Chief Commissioner and Commissioners McLean, Goodeve, and Boyce concurred.

ORDER No. 28101.

In the matter of the application of citizens of Richmond, Ont., and in the vicinity of Richmond, for an order directing the Canadian Northern Railway Company to stop all its passenger trains at Richmond station.

File No. 28225.1.

SATURDAY, the 8th day of February, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

Upon reading what is filed in support of the application, and its appearing that there is large week-end travel from Ottawa to Richmond and vicinity, and upon the reports and recommendation of the Operating Officers of the Board,—

It is ordered: That the Canadian National Railways be, and it is hereby, directed to stop its train No. 8 on flag at Richmond on Monday mornings, to accommodate the additional passenger traffic for Ottawa offering that morning as a result of the week-end travel to Richmond and vicinity referred to.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28087.

In the matter of the application of the Kettle Valley Railway Company, hereinafter called the "applicant company," under section 261 of the Railway Act, for authority to open for the carriage of traffic that portion of its line of railway extending from mileage 13.6 (Princeton) to mileage 8, south of Princeton, a distance of 5.6 miles.

File No. 28618.3.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*

MONDAY, the 10th day of February, A.D. 1919.

Upon the report and recommendation of an Engineer of the Board, concurred in by its Chief Engineer, and filing of the necessary affidavit,—

It is ordered: That the applicant company be, and it is hereby, authorized to open for the carriage of freight traffic that portion of its line of railway extending from mileage 13.6 (Princeton) to mileage 8, south of Princeton, a distance of 5.6 miles; the speed of trains operated over the said line not to exceed a rate of ten miles an hour, the authority granted under this Order to cease and determine on the 30th day of September, 1919.

W. B. NANTEL,

Deputy Chief Commissioner.

MONDAY, the 10th day of February, A.D. 1919.

ORDER No. 28089.

In the matter of the application of the Canadian National Railways, under the amending Act 7-8 Edward VII, section 11, chapter 61, for approval of a by-law enacted by the directors of the Canadian Northern Railway Company, dated January 10, 1919, authorizing R. E. Perry, Assistant General Freight Agent, Montreal, and W. Hately, Assistant General Freight Agent, Winnipeg, to prepare and issue freight tariffs, and H. H. Melanson, Passenger Traffic Manager, Toronto, R. F. MacLeod, Assistant to Passenger Traffic Manager, Montreal, R. L. Fairbairn, General Passenger Agent, Toronto, and R. Creelman, Assistant Passenger Traffic Manager, Winnipeg, to prepare and issue passenger tariffs, in the districts specified in the said by-law, in respect of tolls upon freight and passenger traffic of every description, to be charged by the Canadian National Railways upon its railways or any part thereof.

Case No. 435.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*S. J. McLEAN, *Commissioner.*

Upon the report and recommendation of the Chief Traffic Officer of the Board,—
It is ordered: That the said by-law be, and it is hereby, approved.

W. B. NANTEL,

Deputy Chief Commissioner.

ORDER No. 28088.

In the matter of the application of the Montreal Board of Trade for suspension of the proposed cancellation of commodity rates on cheese to Montreal by the Canadian Pacific Railway Company, the Grand Trunk Railway Company, and the Canadian National Railways.

File No. 26054.2.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

THURSDAY, the 13th day of February, A.D. 1919,

Upon reading what is filed in support of the application,—

It is ordered: That Supplement No. 3 to the Canadian Pacific Railway Tariff C.R.C.No. E-3383, Supplement No. 5 to the Grand Trunk Railway Tariff C.R.C. No. E-3411, and Supplement No. 1 to the Canadian Northern Railway Tariff C.R.C. No. E-1121 be, and they are hereby, suspended pending a hearing of the matter on a date to be fixed by the Board.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28109.

In the matter of the application of the Bonaventure and Gaspé Telephone Company, Limited, hereinafter called the "applicant company," under the amending Act 7-8 Edward VII, section 11, chapter 61, for the approval of by-law No. 7 passed at a meeting of the board of directors of the applicant company held at New Carlisle, Que., on the 27th day of December, 1918, authorizing E. A. Bouillon, managing director, and M. O'C. Harris, general manager, to prepare and issue a tariff, sign the same on behalf of the applicant company, and submit the same to the Board of Railway Commissioners for Canada for their approval.

File No. 8185.

MONDAY, the 17th day of February, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*
S. J. McLEAN, *Commissioner.*

Upon reading what is filed in support of the application, and the report and recommendation of the Chief Traffic Officer of the Board,—

It is ordered: That the said by-law be, and it is hereby, approved.

W. B. NANTEL,
Deputy Chief Commissioner.

CIRCULAR No. 175.

File 6713.153.

Re Interswitching Tickets or Receipts.

MONDAY, the 24th day of February, A.D. 1919.

Railway companies subject to the jurisdiction of the Board using, or proposing to use, a special form of local shipping receipt or switching ticket, in lieu of the approved bill of lading, to the point of transfer for interswitch movements, are required to furnish the Board, at the earliest possible date, with two specimen copies of the form used, or proposed to be used.

By order of the Board,

A. D. CARTWRIGHT,
Secretary.

The Board of
Railway Commissioners for Canada

Judgments, Orders, Regulations, and Rulings

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No. 25

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Imperial Munitions Board vs. Canadian Pacific Railway.—Rates on shell blanks from Sault Ste. Marie.

Heard at Ottawa, November 5, 1918.

File No. 28827.

OTTAWA, December 19, 1918.

REPORT OF CHIEF TRAFFIC OFFICER.

Concurred in by the Chief Commissioner, Deputy Chief Commissioner, Commissioner Goodeve, and Commissioner Boyce.

In their original complaint the Imperial Munitions Board took the ground that the rates on shell bars or shell blanks from Sault Ste. Marie, Ont., to Toronto and Montreal ought not to exceed the rates concurrently charged on what is referred to as commercial bar steel.

Prior to June 30, 1915, the Canadian Pacific's published commodity rates on bar steel from the Soo were 18 cents per 100 pounds to Toronto and 22 cents to Montreal, minimum 30,000 pounds per car. On that date the Montreal rate was reduced to 20 cents on an increased minimum of 60,000 pounds.

On November 6, 1916, both these rates advanced one cent as authorized by the Board in the Eastern Rates Case, so-called.

On March 15, 1918, what is known as the 15 per cent case increased the ordinary rates to 22 cents to Toronto and 26½ cents to Montreal, and the 60,000-pound loading rate to Montreal to 24 cents.

On August 1, 1918, the 24-cent rate to Montreal was cancelled. Three months previously, that is to say on the 1st May, a rate of 35 cents had been published on "shell bars, blanks or forgings in the rough, minimum 60,000 pounds," this being the rate already published for this description in the reverse direction from Montreal to the Soo. On July 2 this rate was reduced to 26½ cents, which the Order in Council in the so-called 25 per cent case increased to 33 cents, these two rates being those applicable also on ordinary commercial bar steel. The 25 per cent increase put the Toronto rate up from 22 cents to 27½ cents.

Concerning the cancellation of the 24 cent rate to Montreal, the ground may well be taken that the original form lost its character of a bar from the time it was cut to 18-inch lengths (taking the 6-inch high explosive shell blank exhibited as an example), and that this operation was a further step in the manufacture and added 10 per cent to the value; yet, through the medium of an amended schedule description as "shell bars, blanks or forgings in the rough," the material was simply lifted from one steel bar rate basis to another steel bar rate basis, with an addition of 10,000 pounds to the minimum load.

Bearing in mind, however, the company's contention that the blank is a bar and not a billet; that the lower rate was not qualified by the tariff as for structural purposes; that the declared consideration for the lower rate was the increase of 100 per cent in the minimum load, and that the blanks complied with this condition, the change in the basis has the appearance of an unequivocal rate increase.

However, the special bar rate having been taken out and shipments having now ceased, while the Board has not the power to order republication for reparation purposes only, it has jurisdiction to declare the rates charged to Montreal since May 1 last unjust, unreasonable and excessive to the extent that they exceeded the rate in effect immediately before that date: namely, 24 cents to August 11, inclusive, subject to the increase to 30 cents from August 12, when the Order in Council was made effective. Subject to correction, no tabulation of shipments having been submitted, this would involve refunds of 11 cents per 100 pounds from May 1 to July 1, inclusive; 2½ cents from July 2 to August 11, inclusive, and 3 cents from August 12, and would satisfy the complaint as originally presented, before the billet question was injected into the case. To Toronto the only refund called for would seem to be from 38 to 22 cents from June 6 to 30, inclusive. I would recommend that the Board order accordingly.

The later contention of the Munitions Board that the blanks, wherever carried, are entitled to the rates for steel billets is not well supported by the facts, in my opinion. The molten steel is poured into moulds, the result being the ingot. The ingot is passed through the rolls and becomes a bloom, and, rerolled, a billet; or the terms bloom and billet may be regarded as interchangeable. Whether bloom or billet, it is the rough steel in the mass ready for manufacture.

The appropriate item of the Canadian Freight Classification provides no definition of a billet, but it does provide that the rates thereon "will apply only on such unfinished material as is intended to be rerolled." Shell blanks are not rerolled.

Complainants rely on the definition of the Official Classification.

The first and last paragraphs of Note 9, item 11, page 198, of that classification would, superficially, indicate the exhibits before the Board as billets in movements governed by the Official Classification; but the words "commercially known as billets or blooms" are evidently intended to exclude articles possessing some similarity though not known to the trade as billets. Except for slight changes immaterial to the question the definition is the same as it was before the war when the shell blank, as an article of transportation, was unknown. In my opinion its commercial name is, or should be, "shell blank." Being a transient article of commerce it is not even now specifically provided for in the various freight classifications or exceptions thereto, being covered where necessary by commodity tariffs, and these void the "analogous articles" rule of classification even if the blank and billet be assumed to be analogous. The question is whether a billet rolled into a round bar 15 to 20 feet long, or even the 12 feet mentioned in the application, unsurfaced though it may be, is still a billet; also, whichever the answer be, does the addition of a further step (the cutting) in the manufacturing process and of 10 per cent to the value make it a billet? I think not, and would draw attention to the remark of the Munitions Board in the first application that "shell steel is the same as commercial bar steel."

The term billet is evidently a later adoption, due apparently to the fact that the Government line had carried the material from Sydney described by the shippers as billets, though it is claimed that for a time this fact was unknown to the railway management. Whether, however, the material is described as billets in the records of the Munitions Board has not been disclosed.

Comparison was made with the billet rates from Steelton, Minn., a point on the Duluth, Missabie and Northern Railroad, the routing to Toronto and Montreal being through the Soo, and the complaint alleges that the Munitions Board has enjoyed the billet classification and rates on this international movement. No documentary proof of this was submitted. The railway company did not deny the allegation, but took

the position that it had not voluntarily or wittingly accepted and carried the blanks as billets, although it may have been the victim of misdescription. The Duluth, Missabie and Northern's Special Tariff as published applied on "billets (iron or steel)" specifically, no mention being made of shell bars, blanks or forgings.

The Duluth, Missabie and Northern's "steel bar" rate was lower than from the Soo only while the 35-cent rate was in force to Montreal from May 1, 1918, to June 24, inclusive, when, as a result of the McAdoo Order, the rates from Steelton advanced.

While the report deals particularly with the portion of the traffic that moved over the Canadian Pacific Railway, it is equally applicable to the remainder carried by the Algoma Central and Canadian Northern Railways; an Order against the one should, therefore, include the others.

Respectfully submitted.

J. HARDWELL,
Chief Traffic Officer.

Application for an order directing the Bell Telephone Company to dismiss from its service J. A. Anderson.

File No. 29113.

RULING.

MR. COMMISSIONER McLEAN:

Application is made for an order of the Board directing the dismissal from the service of the Bell Telephone Company of J. A. Anderson, formerly traffic manager of the said company.

The jurisdiction of the Board in respect of the Bell Telephone Company is entirely one over rates, including under such jurisdiction the provisions of the Railway Act in regard to discrimination. *Tinkess vs. Bell Telephone Co.*, 20 C.R.C., 249, at p. 253. In the same case, where a service re-arrangement was made by the company, it was held, at p. 255, that the re-arrangement which the Bell Telephone Company proposed to make was a matter of internal management of its business, over which the Board had no power as it had been given no jurisdiction by Parliament.

The limitation of the Board's jurisdiction to rate matters so far as the Bell Telephone Company is concerned is also stated in *North Lancaster Exchange vs. Bell Telephone Co.*, 21 C.R.C., 220.

Under no section of the Railway Act is the Board given any jurisdiction to interfere with the internal discipline of a telephone company in respect of directing the dismissal of one of its employees. The Board has a jurisdiction over railway companies in respect of service which it does not possess in the case of telephone companies; but here, notwithstanding its wider jurisdiction, there is no power to interfere with the internal discipline of a railway company in respect of directing the dismissal of one of its employees.

Reference may be made to the application of Roy Gillies, of Macrorie, Sask., asking for the removal of Canadian Northern station agent. Applicant was advised that it was purely a matter of internal railway discipline, and one over which the Board had no jurisdiction. (File 26902.)

Wherever the Board has received a complaint desiring the disciplining or removal of a railway employee, the position has been taken that this is a matter of internal discipline of the company over which the Board has no jurisdiction. This position, which applies in the field of railway regulation where the Board has a wide jurisdiction, applies equally in the field of telephone regulation where the Board has a narrow jurisdiction.

February 8, 1919.

The Deputy Chief Commissioner and Commissioners Goodeve and Boyce concurred.

ORDER No. 28121.

In the matter of the application of the Canadian National Railways for an order apportioning the cost of installing and maintaining the transfer track constructed by the Niagara, St. Catharines and Toronto Railway Company at Thorold, Ont., in pursuance of the Orders of the Board Nos. 26186 and 26465, dated respectively June 5 and August 24, 1917.

File No. 6713.38.

MONDAY, the 24th day of February, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon reading what is filed in support of the application, and on behalf of the Grand Trunk Railway Company and the town of Thorold, and upon the report and recommendation of the Chief Operating Officer of the Board,—

It is ordered: That the said transfer track installed by the Niagara, St. Catharines and Toronto Railway Company, to provide interswitching facilities between that company and the Grand Trunk Railway Company at Thorold, Ont., be maintained by the Niagara, St. Catharines and Toronto Railway Company; the cost of installing and maintaining the same to be borne and paid 50 per cent by the Niagara, St. Catharines and Toronto Railway Company, and 50 per cent by the Grand Trunk Railway Company.

2. That Order No. 28091, dated February 8, 1919, made herein, be resealed.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28120.

In the matter of the application of the Corporation of the township of Nepean and Westboro Police village for disallowance of a proposed increased tariff of the Ottawa Electric Railway Company, C.R.C. No. 5, published and filed to become effective November 18, 1918:

And in the matter of the Order of the Board No. 27839, dated November 6, 1918, suspending the effective date of said tariff pending hearing of the application.

Case No. 2987.

TUESDAY, the 25th day of February, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*

S. J. McLEAN, *Commissioner.*

A. S. GOODEVE, *Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the matter at the sittings of the Board held in Ottawa, November 18, 1918, and December 2, 1918, in the presence of counsel for the Ottawa Electric

Railway Company, the police village of Westboro, and the township of Nepean, counsel for and a representative of the city of Ottawa, certain of the property owners affected appearing by counsel and in person, the evidence offered, and what was alleged; and upon reading the further written submissions filed,—

It is ordered: That the said tariff of the Ottawa Electric Railway Company, C.R.C. No. 5, published and filed to become effective November 18, 1918, be, and it is hereby, disallowed.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28123.

In the matter of the application of the Lake Erie and Northern Railway Company, hereinafter called the "applicant company," under section 327 of the Railway Act, for approval of its Standard Freight Mileage Tariff, C.R.C. No. 165.

File No. 18034.109.

THURSDAY, the 27th day of February, A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*
S. J. McLEAN, *Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The said standard freight mileage tariff having been filed on the basis permitted by the Board,—

It is ordered: That the applicant company's said "standard freight mileage tariff C.R.C. No. 165, be, and the same is hereby, approved; the said tariff together with reference to this order to be published in at least two consecutive weekly issues of the *Canada Gazette*..

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28124.

In the matter of the application of the London and Port Stanley Railway Company, hereinafter called the "applicant company," under section 327 of the Railway Act, for approval of its Standard Mileage Freight Tariff, C.R.C. No. 224.

File No. 25649.5.

THURSDAY, the 27th day of February; A.D. 1919.

Hon. W. B. NANTEL, *Deputy Chief Commissioner.*
S. J. McLEAN, *Commissioner.*
A. C. BOYCE, K.C., *Commissioner.*

The said standard mileage freight tariff having been filed on the basis permitted by the Board,—

It is ordered: That the applicant company's said standard mileage freight tariff C.R.C., No. 224, be, and the same is hereby, approved; the said tariff together with reference to this order to be published in at least two consecutive weekly issues of the *Canada Gazette*.

W. B. NANTEL,
Deputy Chief Commissioner.

ORDER No. 28143.

In the matter of the application of the International Bridge and Terminal Company, Limited, hereinafter called the "applicant company," for leave to operate a line of railway built for construction purposes along the dyke on the river front in the town of Fort Frances, as shown on the plan and profile with the Board under file No. 17421.6, deposited in the Registry Office for the district of Rainy River on the 13th day of January, 1919, as S. 46.

File No. 17421.6.

THURSDAY, the 6th day of March, A.D. 1919.

SIR HENRY L. DRAYTON, K.C., *Chief Commissioner.*

A. C. BOYCE, K.C., *Commissioner.*

Upon hearing the application at the sittings of the Board held in Fort Frances, on the 18th day of June, 1918, in the presence of counsel for the applicant company, the town of Fort Frances, and the Canadian Northern Railway Company, and what was alleged; and upon reading the agreements with and by-laws of the corporation of the town of Fort Frances, dated, respectively, June, 1917, and September 5, 1917, and filed herein; the license of occupation granted by the Canadian Northern Railway Company, dated August 29, 1917; the Order in Council of the Government of the province of Ontario, dated January 27, 1909, copies of which are filed with the Board; and the memorandum addressed to the Board by the Minister of Lands, Forests and Mines, dated August 13, 1918; and its being made to appear that the operation of said line of railway is for the temporary and emergency purposes only referred to by the applicant company at the hearing and represented in subsequent submissions to the Board.

It is ordered: That the applicant company be, and it is hereby, granted leave to construct and operate a railway along the dyke on the river front at Fort Frances from the point of connection with the Canadian Northern Railway north of Church street and west of Front street to the west side of Victoria street, thence easterly from the west side of Victoria street to the premises of the Shevlin-Clarke Mills, and a spur or branch line from a point near Butler avenue to a point near Church street near the Shevlin-Clarke Mills; all as shown on the said plan and profile, deposited in the registry office for the district of Rainy River on the 13th day of January, 1919, as S. 46, on file with the Board under said file No. 17421.6.

2. That the operation herein authorized is for the purpose of hauling shavings, hog fuel, and other saw-mill refuse from the applicant company's loading bunkers near the Shevlin-Clarke Mills in Fort Frances for delivery to the Fort Frances Pulp and Paper Company, Limited, and is granted subject to the performance and fulfilment of all the terms and conditions contained and for the purposes mentioned (a) in the agreement, dated June, 1917, between the applicant company, the municipal corporation of the town of Fort Frances, and the Ontario and Minnesota Power Company, Limited, the agreement dated September 5, 1917, between the applicant company, the municipal corporation of the town of Fort Frances, the Ontario and Minnesota Power Company, Limited, and the Fort Frances Pulp and Paper Company, Limited, and to the provisions of by-law No. 557 of the corporation of the town of Fort Frances passed the 5th day of September, 1917, authorizing the last-mentioned agreement; (b) in the Order in Council approved by the Lieutenant-Governor for the province of Ontario, January 27, 1909; (c) in the license of occupation granted by the Canadian Northern Railway Company, dated August 29, 1917; (d) in the terms of the consent in writing of the Shevlin-Clarke Company filed with the Board; and (e) in the conditions set forth in the memorandum addressed to, and filed with the Board by, the

Minister of Lands, Forests and Mines for the province of Ontario, dated August 13, 1918, namely: That the operation of said railway shall not continue for a longer period than four years without the consent of the Department of Lands, Forests and Mines; that if at any time the company ceases to operate said railway, or if it operates the same for commercial purposes or for any purpose other than the haulage of shavings, hog fuel, and other saw-mill refuse, as in the said recited agreements and other documents specified, all rights under this order shall immediately cease and determine, and shall, *ipso facto*, become forfeited and cancelled without further order; and that said operation shall be at all times subject to inspection by an Engineer of the Board, upon whose report the Board may, at any time, and upon ten days' notice to the applicant company, suspend or cancel the terms of this order, or any of them, and all rights thereunder.

H. L. DRAYTON,
Chief Commissioner.

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Can Board of
T Judgments, Orders, Regulations and Rulings.
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